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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944 45

No. 817 22

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, T. J. McCARTHY STEAMSHIP COMPANY AND AUTOMOTIVE TRADES STEAMSHIP COMPANY, APPELLANTS

vs.

DETROIT AND CLEVELAND NAVIGATION COMPANY, GREAT LAKES TRANSIT COMPANY, AND NICHOLSON UNIVERSAL STEAMSHIP COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN

FILED JANUARY 27, 1945

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OCTOBER TERM, 1944

No. 877

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vs.

DETROIT AND CLEVELAND NAVIGATION COMPANY, GREAT LAKES TRANSIT COMPANY AND NICHOLSON UNIVERSAL STEAMSHIP COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN

INDEX

	Original	Print
Record from D. C. U. S., Eastern District of Michigan	A	
Docket entries	A	
Complaint	1	1
Exhibit A—Report and order of Commission on further hearing, March 7, 1944, Docket No. W-592	11	10
Exhibit B—Report and order of Commission, Nov. 25, 1942, Docket No. W-592	18	21
Exhibit C—Brief of applicants before Commission in Docket No. W-592 and No. W-729	21	26
Exhibit D—Brief on further hearing before Commission in Docket No. W-592 and No. W-729	26	34
Exhibit E—Petition for reopening, reconsideration, etc., before Commission in Docket No. W-592 and No. W-729	35	47
Exhibit F—Letter, Chief Examiner to William F. Price	50	73
Answer of Interstate Commerce Commission	51	74
Answer of United States of America	55	76
Petition of T. J. McCarthy Steamship Company and Automotive Trades Steamship Company, for leave to intervene	58	78

Record from D. C. U. S., Eastern District of Michigan—Con.	Original	Print
Order permitting intervention of T. J. McCarthy Steamship Company and Automotive Trades Steamship Company	60	78
Answer of T. J. McCarthy Steamship Company and Automotive Trades Steamship Company	62	79
Opinions, Simons, J	66	82
Final decree	79	90
Petition for appeal	81	91
Order allowing appeal	83	92
Assignment of errors	84	93
Citation on appeal [omitted in printing]	95	95
Notice of appeal	98	95
bond for cost on appeal [omitted in printing]	100	96
Notice of filing bond on appeal [omitted in printing]	103	96
Praecipe for transcript of record	107	96
Clerk's certificate [omitted in printing]	109	97

PLAINTIFFS' EXHIBITS

No. 1—Transcripts of hearings before Interstate Commerce Commission in Docket No. W-592 and Docket No. W-729	1	98
Caption and appearances	1	98
Testimony of—T. J. McCarthy	8	101
J. M. Arnold	70	136
Exhibits:		
No. 2—Correspondence between D. & C. Navigation Co. and T. J. McCarthy Steamship Co. re charter	114-A	160
Agreement and charter of Feb. 18, 1937	114-E	162
Nos. 3 to 10 inc.—Shipping orders	114-P	follows 168
Testimony of—		
T. J. McCarthy (recalled)	116	169
William J. Hoffman	178	204
T. J. McCarthy (recalled)	187	209
William J. Hoffman (recalled)	197	215
T. J. McCarthy (recalled)	199	216
E. J. Hern	206	220
N. J. Brennan	213	224
W. H. Rivett	236	236
H. L. Zenzius	250	245
P. W. Davis	265	253
H. P. Blight	289	266
J. R. DePlanche	304	276
T. J. McCarthy (recalled)	310	278
F. L. Hewitt, Jr.	325	286
J. M. Arnold (recalled)	326	287

Record from D. C. U. S., Eastern District of Michigan—Con.
No. 1—Transcripts of hearing—Continued.
Exhibits: Original Print

No. 11—Modifications of charter dated Feb. 18, 1937, on steamer T. J. McCarthy, April 7, 1939 339 294
No. 12—Modification of charter dated Feb. 18, 1937, of steamer George W. Mead, April 7, 1939 342 296
No. 13—Agreement between D. & C. Navigation Co. and T. J. McCarthy, March 29, 1933 345 298
No. 14—Same, Aug. 3, 1933 350 300
No. 15—Same, April 17, 1934 353 302
No. 16—Same, Feb. 18, 1937 357 304
No. 17—Agreement between D. & C. Navigation Co. and Automotive Trades Steamship Co. Nov. 24, 1936 360 305
No. 18—Agreement between D. & C. Navigation Co. and T. J. McCarthy Steamship Co., Feb. 18, 1937 362 306
No. 19—Contract between T. J. McCarthy Steamship Co. and T. J. McCarthy, April 7, 1937 366 308
No. 20—Agreement between D. & C. Navigation Co. and Automotive Trades Steamship Co., March 8, 1941 368 309
No. 21—Same, Feb. 4, 1942 372 311
No. 22—Agreement between D. & C. Navigation Co. and T. J. McCarthy Steamship Co., Feb. 4, 1942 376 313
No. 23—Confirmation of discussions with C. L. Perkins, Oct. 10, 1937 380-A 316
No. 24—Statement showing number of automobiles transported, etc 387 321
No. 25—Same 388 321
No. 26—Statement showing number of automobiles on hand at Detroit, seasons of 1940-1941 389 322
No. 27—Statement showing operation of Steamer George H. Ingalls 401 326
No. 28—Local commodity freight tariffs Nos. 1 to 9 inc.—Automotive Trades Steamship Co 403 327
No. 29—Same, T. J. McCarthy Steamship Co 417 351
No. 30—American form 1936 lake grain bill of lading 432 375
No. 31—Lake bill of lading for bulk cargoes other than grain and seed 433 377
No. 32—Bill of lading 434 379

	Original	Print
Record from D. C. U. S., Eastern District of Michigan—Con.		
No. 1—Transcripts of hearing—Continued.		
Argument of Sparkman D. Foster	437	380
Argument of S. S. Eisen	447	385
Reply argument of Sparkman D. Foster	466	395
Transcript on rehearing	472	399
Caption and appearances	472	399
Testimony of—		
Timothy J. McCarthy (recalled)	474	400
M. J. Brennan (recalled)	517	424
Wm. H. Rivett (recalled)	527	430
E. B. Rogers	532	433
W. F. Emblidge	538	436
J. J. Lyon	565	452
Lewis Hughes	586	464
Marcus Feder, Jr	594	468
J. M. Arnold (recalled)	610	477
F. L. Hewitt, Jr. (recalled)	619	482
Jas. McMillan	629	488
Exhibits:		
No. 33—Letter, Robert D. Smith to T. J. McCarthy Steamship Co., May 29, 1943	643	495
No. 34—Report of Commission on further hearing, May 10, 1943, Docket No. 28162	644	496
No. 35—Letter, Claude R. Porter to Joseph B. Eastman, April 24, 1942	647	499
No. 36—Statistical table of operations of Great Lakes Transit Corp	648	500
No. 37—Financial statement of Great Lakes Transit Corp	649	501
No. 38—Annual report of D. & C. Navigation Co., 1942	650	502
Argument of S. D. Foster	657	506
Argument of S. S. Eisen	670	513
Argument of K. D. Loos	685	521
Argument of F. W. Sullivan	691	523
Reply argument of S. D. Foster	694	525
No. 2—Blotter advertising D. & C. Navigation Co	705	531
No. 3—Excerpts from transcripts of hearings before Interstate Commerce Commission in Docket No. W—732	706	532
Testimony of F. L. Hewitt, Jr	707	532
Testimony of Clarence L. Holt	708	533
Testimony of—		
T. J. McCarthy	709	533
F. L. Hewitt, Jr	710	534

	Original	Print
Record from D. C. U. S., Eastern District of Michigan—Con.		
No. 3—Excerpts from transcripts—Continued.		
Exhibits:		
No. 1—Statement showing total number of automobiles handled by Nicholson Universal Steamship Co., 1938-1940	819	593
No. 2—Statement showing total number of automobiles carried by all lake lines, 1938-1940	820	594
No. 3—Statement showing percentage Nicholson Co. tonnage is of the total handled by all lake lines, 1938-1940	821	594
No. 4—Statement showing actual and potential operating days for year 1940, etc.—Nicholson vessels	822	595
No. 5—Chart in re Nicholson lines—Duluth	823	596
No. 6—Chart in re Nicholson lines—Cleveland	824	597
No. 7—Chart in re Nicholson lines—Buffalo	825	598
No. 8—On hand statement of autos—day by day—to Buffalo, Cleveland, and Duluth for months of May, June, October, and November, 1940	826	599
No. 9—Statement showing number of automobiles transported by Nicholson Co. for portion of 1941 as compared with corresponding periods of 1938, 1939, and 1940	829	600
No. 10—Statement showing number of Duluth automobiles on hand each day at Detroit for 1941, etc	830	601
No. 4—Original application of T. J. McCarthy Steamship Company	833	602
No. 5—Amended application of T. J. McCarthy Steamship Company	845	611
No. 6—Original application of Automotive Trades Steamship Company	863	624
No. 7—Amended application of Automotive Trades Steamship Company	875	633
Statement of points to be relied upon and designation of record to be printed	893	646
Order noting probable jurisdiction	894	647

[1] In United States District Court for the Eastern District of Michigan, Southern Division

Civil Action No. 4259

DETROIT AND CLEVELAND NAVIGATION COMPANY, A MICHIGAN CORPORATION, GREAT LAKES TRANSIT CORPORATION, A NEW YORK CORPORATION, AND NICHOLSON UNIVERSAL STEAMSHIP COMPANY, A DELAWARE CORPORATION, PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AN ADMINISTRATIVE & AGENCY OF THE UNITED STATES OF AMERICA, T. J. MCCARTHY STEAMSHIP COMPANY, A MICHIGAN CORPORATION, AND AUTOMOTIVE TRADES STEAMSHIP COMPANY, A MICHIGAN CORPORATION, DEFENDANTS

[Title endorsement omitted.]

Complaint

Filed July 3, 1944

To the Honorable the Judges of the United States for the Eastern District of Michigan, Southern Division:

Detroit and Cleveland Navigation Company, Great Lakes Transit Corporation and the Nicholson Universal Steamship Company bring this action against the United States of America, the Interstate Commerce Commission (hereinafter sometimes referred to as the Commission), and T. J. McCarthy Steamship Company and Automotive Trades Steamship Company (hereinafter sometimes collectively referred to as Defendants) for the purpose of enjoining, setting aside, and annulling an order of the Commission (annexed hereto as Exhibit A), decided March 7, 1944, and scheduled to take effect on July 3, 1944, in proceedings entitled "T. J. McCarthy Steamship Company Common Carrier Application" Docket No. W-592, and "Automotive Trades Steamship Company Common Carrier Application" Docket No. W-729, and allege:

I

The jurisdiction of this Court over this action is under and pursuant to the provisions of Section 41 subdivision (28) and Sections 43 to 48, inclusive, of Title 28 of the United States Judicial Code.

II

Plaintiff Detroit and Cleveland Navigation Company is a corporation organized under and existing by virtue of the laws of the State of Michigan, having its principal operating office in the Eastern District of Michigan, Southern Division.

Plaintiff Great Lakes Transit Corporation is a corporation organized under and existing by virtue of the laws of the State of New York, having its principal operating office in Buffalo, New York.

Plaintiff Nicholson Universal Steamship Company is a corporation organized under and existing by virtue of the laws of the State of Delaware, having its principal operating office in the Eastern District of Michigan, Southern Division.

All Plaintiffs named are Common Carriers by water, in Interstate or Foreign commerce, in the transportation of motor vehicles and other properties, and as such are subject to the provisions of the Interstate Commerce Act, Part III, United States Code, Title 49, Section 301.

The matter covered by the said order of the Commission, annexed hereto as Exhibit A, arose in the Eastern District of Michigan, Southern Division.

III

The Defendant, United States of America, is sued pursuant to express authority of the Congress of the United States, as provided in Sections 43 to 48 of Title 28 of the United States Code.

The defendant, Interstate Commerce Commission is an administrative agency existing under and by virtue of the Interstate Commerce Act, United States Code, Title 49, and is specifically charged with the administration and enforcement of the provisions of the said Act.

The defendants, T. J. McCarthy Steamship Company and Automotive Trades Steamship Company are Michigan corporations, having their principal operating offices in the Eastern District of Michigan, Southern Division, and are engaged in the interstate transportation of property by water.

IV

The plaintiffs have been engaged in the interstate transportation of property by water for several score years. In the conduct of their activities the plaintiffs own and operate terminal facilities, steamships and other marine and off-shore equipment and appurtenances representing an investment of approximately $2,000,000.

By applications filed May 31, 1941, as amended October 18, 1941, the defendant steamship lines sought certificates of public convenience and necessity under the provisions of Section 309 (a) and (c) of the Interstate Commerce Act,[1] authorizing continuance (1) of operations in existence January 1, 1940, and (2) of operations not in existence on that day but in existence on February 1, 1941, in interstate commerce, as common carriers by water in the transportation of motor vehicles from and to specified areas on the Great Lakes.

V

On January 1, 1940, and prior thereto throughout the existence of the defendant steamship lines insofar as they were active in the transportation of automobiles, and on February 1, 1941, and subsequent thereto until 1942 the total activities of the defendant steamship lines consisted in chartering three vessels owned by them to the Detroit and Cleveland Navigation Company for operation by the latter in its common carrier activities. Concurrently with the chartering of the vessels as aforesaid there also existed a solicitation agreement between the Detroit and Cleveland Navigation Company and the defendant steamship lines wherein the identity of the defendant steamship lines was merged into and submerged into the identity of the Detroit and Cleveland Navigation Company.

Consistent with the well-established doctrines that were enunciated by the Commission and affirmed by the Courts (United States et al vs. Rosenblum Truck Lines, Inc., 315 U. S. 50) that

---

[1] "SEC. 309. (a) Except as otherwise provided in this section and section 311, no common carrier by water shall engage in transportation subject to this part unless it holds a certificate of public convenience and necessity issued by the Commission: Provided, however, That subject to section 310, if any such carrier or a predecessor in interest was in bona fide operation as a common carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made and has so operated since that time (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in subsection (b) of this section and prior to the expiration of one hundred and twenty days after this section takes effect. Pending the determination of any such application, the continuance of such operation shall be lawful. If the application for such certificate is not made within one hundred and twenty days after this section takes effect, it shall be decided in accordance with the standards and procedure provided for in subsection (c), and such certificate shall be issued or denied accordingly. Any person, not included within the provisions of the foregoing proviso, who is engaged in transportation as a common carrier by water when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a certificate, and, if application for such certificate is made to the Commission within such period, the continuance of such operation shall be lawful pending determination of such application."

"(c) Subject to section 310, upon application as provided in this section the Commission shall issue a certificate to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if the Commission finds that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied."

"Grandfather" [2] operating rights will be granted only to a
4 carrier exercising complete control and dominion over the operating vessels to the exclusion of the nonoperating owner;

on November 25, 1942, the Interstate Commerce Commission, by Division 4, dismissed the applications insofar as they pertained to Section 309 (a) of the Act, and also found that the need for the defendant steamship lines' service under the provisions of Section 309 (c) of the Act had not been established, and dismissed the applications in full. Attached hereto as Exhibit B is a copy of the report of Division 4 of the Commission decided November 25, 1942.

Based on a petition for rehearing filed by the defendant steamship lines on January 4, 1943, alleging material changes in the factual situation since the last hearings therein, the Commission reopened and reassigned the applications of the defendant steamship lines for further hearing on June 4, 1943.

VI

Subsequent to the rehearing as aforesaid and the filing of Briefs by defendant steamship lines and plaintiffs Detroit and Cleveland Navigation Company and Nicholson Universal Steamship Company, copies of which are attached hereto as Exhibits C and D, the Interstate Commerce Commission issued its report of March 7, 1944, Exhibit A hereof. In its report and order of March 7, 1944, the Commission found that public convenience and necessity requires operating by the defendant steamship lines as common carriers of motor vehicles, between Detroit, Michigan, and Lake Erie and Lake Superior ports.

Dealing first with the operations between Lake Erie and Lake Superior ports, the factual situation concerning the matter and quantity of proofs submitted is set forth in the Commission's report of March 7, 1944, page 13, of Exhibit A hereof, as follows:

"Although the situation respecting the withdrawal of vessels from service between Detroit and Lake Erie ports is substantially the same as that between Detroit and Lake Superior ports, there is no present demand for the transportation of motor vehicles from Detroit to Lake Superior ports. The witnesses, however, *were of the opinion* that applicants' (defendant steamship lines) vessels will be needed in the transportation of automobiles between the last-mentioned ports when the manufacture thereof is resumed." [Italics furnished.]

The record indubitably establishes that the defendant steamship lines have never, at any time in the past, engaged in the

[2] A term generally used to discriminate a water carrier in operation on January 1, 1940, and continually since.

transportation of automotive vehicles between Detroit and Lake Superior ports. Counterbalancing the mere opinion of witnesses that there may be a need for additional transportation service between Detroit and Lake Superior ports in the future was the testimony and evidence of the established common carriers by water, the plaintiffs herein, that they provided adequate satisfactory transportation service in the past and are and will be in a position to furnish adequate and satisfactory transportation service in the future when and if the need therefor arises concurrently with the resumption of the manufacture of new automobiles for commercial usage.

5

VII.

The finding of the Commission that public convenience and necessity require the certification of the defendant steamship lines to engage in the water transportation of automobiles in the future is predicated upon the following: (1) the investment of the defendant steamship lines in marine and off-shore facilities may be impaired if they do not secure the operating certificates sought; (2) the utilization by the Detroit and Cleveland Navigation Company, in the past, of the facilities of the defendant steamship lines, in and of itself, establishes the past need for those particular vessels; (3) if those particular vessels of the defendant steamship lines had not been so utilized by the Detroit and Cleveland Navigation Company, and if no other or substitute vessels were used in lieu thereof, there might have been a past shortage of transportation facilities; (4) because of the apparent shortage of shipping facilities on the Great Lakes precipitated by current war conditions and the noncomitant diversion of steamship facilities to war activities, there is "uncertainty as to the length of time that may be required to procure and place in operation on the Great Lakes" vessels sufficient to meet future needs when and if automobile production is resumed, with resulting need for large scale water transportation of commercial vehicles; (5) the temporary operating authorities presently possessed by the defendant steamship lines authorizing operations in the transportation of automobiles between the ports on the Great Lakes may not extend until the resumption of commercial automobile production and the tendering of automobiles for water transportation in large quantities, and under certain conditions the authority vested in the Commission, in normal times, to grant temporary operating authorities for a period not in excess of one hundred and eighty days may not accord the shipping situation the full measure of relief it may, under certain conditions, require.

VIII

Section 309 (c) of the Interstate Commerce Act hereinbefore quoted in full authorizes the Commission to certify a common carrier if it is found that the service proposed "is or will be required by the present or future public convenience and necessity." It is admitted by all parties, and so found by the Commission, that there is no present need for the proposed service. There is no current production of automotive equipment for commercial usage and no demand for transportation thereof. In any event the defendant steamship lines possess current temporary authorities issued to them by the Commission under the Second War Powers Act which enable the defendant steamship lines to engage in present transportation if, as, and when the need therefor should arise. As a matter of fact the defendant steamship lines are not now engaged in the transportation of automobiles on the Great Lakes even though they possess current temporary operating authorities, a clear manifestation of present lack of need for such service.

6 The Commission has endeavored to predicate the future need for the proposed service only and solely on the facts set forth in Paragraph No. VII hereof. The record does not supply factural data to enable the Commission to conclude that there was a past need for the service herein proposed by the defendant steamship lines. The Commission makes no such finding. It merely finds that there was need for those particular boats in the Detroit and Cleveland Navigation Company service in the past. The Act does not authorize the Commission to certify boats or vessels; the Commission can certify a proposed service only if there is present or future need for such proposed service.

IX

To the extent that the Commission's findings would certificate the defendant steamship lines herein, predicated substantially on the fact that there may have been a past need for the defendant steamship lines' vessels in the service of another carrier, such findings are based upon errors of law, and the Commission's ultimate findings of the need for the proposed service at present or in the future are unsupported by the evidence and, as a matter of fact, are challenged by the evidence which unequivocally establishes the existence of present and future adequate transportation service by certificated common carriers.

In Philadelphia-Detroit Lines, Inc., Extension of Operations—Detroit, 26 M. C. C. 729, 733, the whole commission, quoting from San Antonio & A. P. Ry. Co. construction, 111 I. C. C. 483, and from Texas & N. O. Ry. Co. v. Northside Belt Ry. Co., 276 U. S.

475, defined the term public convenience and necessity as follows: "The question, in substance, is whether the new operation or service will serve a useful public service, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operation of existing carriers contrary to the public interest."

To the extent that the Commission has failed to take cognizance of the record, which clearly establishes that the purposes sought to be effectuated by the proposed service can and will be served as well by existing steamship lines and that the new operation proposed would endanger or impair the operation of the existing carriers who possess Commission authorization[3] to engage in similar operations and that there is no present or future public need for the proposed service (as differentiated from Commission's findings of a past need for the specific boats), the ultimate conclusions of the Commission are unsound in law, contrary to the record, arbitrary, and capricious.

7 Alleging manifold errors of fact and law in the Commission's order of March 7, 1944, Exhibit A hereof, plaintiff Nicholson Universal Steamship Company under date of April 19, 1944, in due season, filed its "Petition for Reopening, Reconsideration and Postponement of the Effective Date of the Order," attached hereto and made a part hereof as Exhibit E. By order dated June 5, 1944, the Commission by a vote of five to four denied the aforesaid petition of plaintiff Nicholson Universal Steamship Company.

X

Petitions substantially similar to that of Nicholson Universal Steamship Company were filed by plaintiffs Detroit and Cleveland Navigation Company and Great Lakes Transit Corporation on June 30, 1944. Attached hereto as Exhibit F is a communication under date of June 16, 1944, from the Chief Examiner of the Interstate Commerce Commission assuming that the action of the Commission of June 5, 1944, as above in denying the petition of the Nicholson Universal Steamship Company (Exhibit E) automatically disposes of the petitions of plaintiffs Detroit and Cleveland Navigation Company and Great Lakes Transit Corporation. Final formal action of the Commission has not been received on the petitions of plaintiffs Detroit and Cleveland Navigation Company and Great Lakes Transit Corporation but the

[3] The Detroit and Cleveland Navigation Company possesses Certificate No. W-378; Great Lakes Transit Corporation possesses Certificate No. W-154; and Nicholson Universal Steamship Company possesses Certificate No. W-357.

tenor of the Commission's communication of June 16, 1944 (Exhibit F) gives rise to the assumption that if any action is taken thereon, it will be to deny the petitions.

XI

The action of the Commission granting the defendant steamship lines permanent operating authorities to engage in the transportation of automobiles between Detroit and all ports on Lake Erie and Lake Superior resulted from: (1) arbitrarily failing to review all of the evidence of record, and (2) transcending the legitimate bounds of the statutory authority conferred upon the Commission, as specifically defined by the act and interpreted by the decisions of the Commission and the Court, as quoted, and does now cause and will pendente lite continue to cause irreparable damage to the plaintiffs. The action of the Commission, as aforesaid, accordingly has resulted in confiscation, and, unless the enforcement, operation and execution of said order of the Commission is restricted, will continue, in the future, to cause plaintiffs substantial and irreparable damage as aforesaid, for the plaintiffs have no adequate remedy at law.

Wherefore, plaintiffs pray:

First. That the Judge with whom this Bill of Complaint is filed shall call to his assistance, in the hearing and determination of this cause, two other Judges, of whom at least one shall be a Circuit Judge.

8 Second. That process may issue against defendants, United States of America and Interstate Commerce Commission, T. J. McCarthy Steamship Company, and Automotive Trades Steamship Company, and that due and proper service of such process and of this complaint be forthwith made by filing a copy thereof in the office of the Secretary of the Interstate Commerce Commission and another copy thereof upon the Attorney General of the United States, as provided by law, and additional copies thereof upon the defendant steamship lines.

Third: That upon final hearing of this cause this Court adjudge, order and decree, insofar as said report and order of the Interstate Commerce Commission dated March 7, 1944 (Exhibit A), which is now scheduled to become effective July 3, 1944, unless suspended, restrained or otherwise enjoined, grants the defendant steamship lines permanent authorities to engage in the transportation of automobiles from and to ports on Lake Erie and Lake Superior, that it be temporarily and permanently enjoined, that the Court find the aforesaid order has at all times been beyond the lawful authority of said Commission and wholly null

and void, that it deprives plaintiffs of their property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States, and that said order insofar as it grants the defendant steamship lines permanent operating authorities as aforesaid be perpetually set aside and annulled and the enforcement thereof be perpetually enjoined.

Fourth. That pending said final hearing and in the meantime, a temporary injunction and restraint issue enjoining the defendants from effectuating the report of the Commission decided March 7, 1944 (Exhibit A), to the extent that it would grant defendant steamship lines permanent operating authorities to engage in the transportation of automobiles on the Great Lakes.

9 Fifth. That this Court grant to plaintiffs such other and further relief as may be warranted in the premises.

DETROIT AND CLEVELAND NAVIGATION COMPANY,
a Michigan corporation,

By JAS. T. McMILLAN, *President.*

NICHOLSON UNIVERSAL STEAMSHIP COMPANY,
a Delaware corporation,

By ANGELL, TURNER, DYER & MEEK, *Their Attorneys.*

GREAT LAKES TRANSIT CORPORATION,
a New York corporation,

By ANGELL, TURNER, DYER & MEEK,
Their Attorneys.

ANGELL, TURNER, DYER & MEEK,
2104 Dime Building, Detroit 26, Michigan,
Attorneys for Plaintiffs.

POPE & BALLARD,
120 South LaSalle St., Chicago 3, Illinois.

S. S. EISEN,
140 Cedar St., New York, N. Y.
Of Counsel for Plaintiffs.

10 [*Duly sworn to by J. T. McMillan; jurat omitted in printing.*]

11 *Exhibit A to complaint*

INTERSTATE COMMERCE COMMISSION

No. W-592[1]

T. J. McCARTHY STEAMSHIP COMPANY
COMMON CARRIER APPLICATION

Submitted January 12, 1944.—Decided March 7, 1944

Upon further hearing, findings in prior report, 250 I. C. C. 550, that applicants were not in bona fide operation on January 1, 1940, as common or contract carriers by water, in the performance of transportation subject to the provisions of part III of the act, and that present or future public convenience and necessity were not shown to require such operations, reversed in part. Public convenience and necessity found to require operation by applicants as common carriers of motor vehicles between Detroit, Mich., and Lake Erie and Lake Superior ports. Findings in prior report in other respects affirmed.

Additional appearances: W. E. Emblidge and Karl D. Loos for certain water carriers; protestants.

REPORT OF THE COMMISSION ON FURTHER HEARING

By the COMMISSION:

Exceptions to the examiner's report were filed by applicants and protestants; certain of protestants replied to applicants' exceptions; and the proceedings were orally argued. Our conclusions differ from those recommended.

In the prior report, 250 I. C. C. 550, division 4 found that applicants were not in bona fide operation on January 1, 1940, as common or contract carriers by water, in the performance of transportation subject to the provisions of part III of the Interstate Commerce Act, and had failed to show that present or future public convenience and necessity require such operation, and denied their application.

The applications, as amended October 18, 1941, were for certificates of public convenience and necessity under the provisions of section 309 (a) or 309 (c) of the act, authorizing operations by applicants as common carriers by water, in interstate or foreign

[1] This report also embraces No. W-729, Automotive Trades Steamship Company Common Carrier Application.

commerce, in the transportation of motor vehicles[2] between Detroit, Mich., on the one hand, and Cleveland, Ohio, Buffalo, N. Y., and Erie, Pa., on the other hand, and between Buffalo and Cleveland. On oral argument before division 4, applicants indicated that they desired authority to serve other points on the Great Lakes, such as Duluth, Minn.

Upon petition of applicants, we reopened the proceedings for further hearing and postponed the effective date of the order denying the applications until our further order. At the further hearing the Great Lakes Transit Corporation, in addition to protestants Detroit and Cleveland Navigation Company, hereinafter called the D. & C. Company, and Nicholson Universal Steamship Company opposed the granting of the applications.

At the further hearing applicants did not press their claim to certificates under the provisions of section 309 (a) of the act, or question the correctness of the finding of division 4 that applicants were not in bona fide operation as common or contract carriers by water on January 1, 1940. We affirm that finding.

As to the applications under the provisions of section 309 (*e*), division 4 concluded that the evidence submitted was not sufficient to support a finding that the present or future public convenience and necessity required operation by applicants, and that this was particularly true because of the cessation of the manufacture of automobiles and their shipment by water.

12 At the further hearing applicants indicated, as they did on oral argument following the original hearing, that they desired authority to transport motor vehicles between Detroit and all Lake Erie ports and between Detroit and Lake Superior ports. Protestants objected on the grounds that the authority thus sought was beyond the scope of the applications, as amended October 18, 1941. As the additional ports on Lake Erie which applicants seek authority to serve are intermediate to those named in the applications, as amended, the inclusion of such ports would not unduly broaden the applications. The question as to whether the inclusion of Lake Superior ports would operate to broaden the applications is not entirely free from doubt, because of the generality of applicants' irregular route operations which they sought authority to continue under the original applications as amended at the original hearing. Applicants accordingly were permitted to submit evidence in support of the latter request; and evidence in rebuttal was introduced by certain of protestants. In the circumstances, the applications will be considered as requesting

[2] Automobiles, passenger; chassis, commercial; chassis, freight automobile; chassis, passenger automobile; hearses, automobile; trailers, motor vehicle; trucks, panel or commercial delivery; trucks, motor vehicle; set up, on wheels.

authority to transport motor vehicles between Detroit and Lake Superior ports, as well as between Detroit and Lake Erie ports. The objection is overruled.

The controlling interest of both applicants is owned by the same person, applicants' president. Applicants do not seek two certificates. They are agreed that, if their applications are granted, a single certificate may be issued to either of them for itself and as managing agent of the other.

Applicants' president was affiliated with the D. & C. Company in a soliciting capacity for about 9 years prior to 1942. Before that, he had been associated for more than 10 years with various steamship companies engaged in the transportation of automobiles on the Great Lakes. From 1937 to 1942, two of applicants' vessels were chartered by the D. & C. Company and used to transport motor vehicles from Detroit to certain Lake Erie ports. A third vessel owned by applicants was operated by them in the bulk of trade during 1938 and 1939, but also was chartered to the D. & C. Company and used by it to transport automobiles from Detroit to certain Lake Erie ports during the 1940 season and most of the 1941 season. Near the close of the 1941 season the latter vessel was used by applicants to transport a cargo of bulk storage grain from Fort William, Ont., to Buffalo. As of September 30, 1941, applicants' total assets and liabilities approximated $245,900 and $110,800, respectively, and their net worth was given as approximately $135,100. At the time of the further hearing the three vessels were owned by applicants free of any encumbrance.

At the time of the original hearing, two of applicants' vessels were equipped to carry motor vehicles. The third also was so equipped until about 2 months before that hearing, when it was altered to make it suitable for the transportation of bulk grain. Following the cessation of the manufacture of motor vehicles for civilian use since that hearing, the other two vessels were similarly altered. Two of these vessels were completely reconverted to bulk freighters prior to the 1943 navigation season so that they would be available for the transportation of iron ore if required for that purpose. These vessels, according to applicants, could not be operated successfully in the bulk freight trade during normal times, and are considered as obsolete for such operation, especially in relation to modern bulk freighters which have twice the capacity of these vessels. Applicants have retained all of the equipment and parts originally installed in the vessels for the purpose of converting them into motor-vehicle carriers, and are prepared to reconvert the vessels to motor-vehicle carriers upon termination of the present national emergency.

Although there has been no production, or shipment by water, of motor vehicles for civilian use since the original hearing, motor vehicles for military use were so shipped from and to certain Great Lakes ports during the navigation season of 1942, and similar shipments during the season of 1943 were in prospect at the time of the further hearing. By order of August 17, 1942, division 4 granted Automotive Company temporary authority until December 31, 1944, to operate as a common carrier by water, in the transportation of grain from all ports on Lake Superior to all ports on Lake Erie and of automobiles from Detroit to all ports on Lake Erie, on the same vessels at the same time, and by order of September 21, 1942, like operating authority was granted to the McCarthy Company to transport grain and motor vehicles between Detroit and Buffalo, on the same vessels at the same time. Such authority was based upon the immediate and urgent need for the described service. Thereunder, during 1942, applicants transported several hundred motor vehicles for the United States Army from Detroit to Buffalo. These vehicles were loaded and carried on the spar decks of applicants' vessels which were operated in the transportation of grain in bulk from ports on Lake Superior to Buffalo. The transportation of grain was undertaken at the direction of the Office of Defense Transportation. As the result of inquiries received by applicants at the time of the
13 further hearing from a representative of the Army and from a common carrier of automobiles by motortruck, applicants expected to continue to transport motor vehicles from and to the same ports during 1943. Applicants state that they are prepared to transport motor vehicles not only from Detroit to Buffalo, but also from Detroit to the head of the lakes.

Since the original hearing, the situation in relation to the number and capacity of vessels available for the transportation of motor vehicles on the Great Lakes has changed substantially. At the time of the further hearing on vessels of the motor-vehicle carrying type were in operation on the Great Lakes, and a large percentage of all types of vessels formerly used in the transportation of motor vehicles had been requisitioned by the Government and withdrawn from service on the Great Lakes. In their brief applicants advised that since the hearing the Government has elected to return to protestant Great Lakes Transit Corporation 4 of the 14 vessels of that carrier which had been requisitioned. This advice was confirmed by letter dated August 10, 1943, from counsel for that protestant.

Testimony in support of the applications was submitted at the original hearing by representatives of the Ford Motor Company, Chrysler Corporation, and Hudson Motor Car Company of Detroit, and at the further hearing by representatives of the last two-

named companies and of the Pontiac Motor Division of the General Motors Corporation of Pontiac, Mich. In substance, it is that applicants' vessels were essential to the transportation of automobiles from Detroit to Lake Erie ports in the past; that it would not have been possible without them for the water carrier to have handled the automobiles offered for transportation in 1940 and 1941 and that they will again be needed when normal production of motor vehicles is resumed. Similar testimony was offered on behalf of motor common carriers which handle from Buffalo to eastern destinations automobiles transported by water to that point over the Great Lakes. One of the automobile manufacturers was subjected to delays in the transportation of motor vehicles by water during 1941 from Detroit to Lake Superior ports. Another is manufacturing motor vehicles for military use. In view of the large number of vessels which have been withdrawn from service on the Great Lakes since the original hearing, there is present need for the use of applicants' vessels from Detroit to Lake Erie ports. Although the situation respecting the withdrawal of vessels from service between Detroit and Lake Erie ports is substantially the same as that between Detroit and Lake Superior ports, there is no present demand for the transportation of motor vehicles from Detroit to Lake Superior ports. The witnesses, however, were of the opinion that applicants' vessels will be needed in the transportation of automobiles between the last-mentioned ports when the manufacture thereof is resumed.

During 1939, 1940, and 1941, respectively, 44,147, 77,741 and 85,493 motor vehicles were carried on the vessels chartered by applicants to the D. & C. Company. Of the total number of motor vehicles carried by the D. & C. Company the proportions handled on the vessels chartered from applicants were 64 per cent in 1939, 74 per cent in 1940, and 71 per cent in 1941. Thus, prior to the cessation of the manufacture of motor vehicles for civilian use, applicants' vessels were extensively utilized in the transportation of such vehicles.

Prior to the war, the peak period for the movement of automobiles on the Great Lakes commenced in September or early October, with the production of new models. In 1940 and 1941, there were delays ranging from 2 to 4 days in the loading of the automobiles from the docks at Detroit incident to the congestion of such traffic and the inability of the water carriers to handle it promptly, which caused delays in delivery at final destination and resulted in numerous complaints from automobile dealers and distributors. Because of such delays, it was necessary at times to move by motortruck automobiles which had been previously delivered to the docks at Detroit for water transportation.

Before the manufacture of motor vehicles for civilian use was discontinued, protestant Nicholson Universal Steamship Company was engaged principally in the transportation of motor vehicles between Detroit, Cleveland, Buffalo, Milwaukee, Wis., and Duluth, and originally operated four vessels especially designed for that purpose. One of these vessels was converted during 1941 to a combination motor vehicle and bulk carrier. This protestant was engaged also in the transportation of bulk commodities, such as grain, coal, and ore, between certain of these and other Great Lakes ports. Eight bulk freighters were operated by it in the latter service, and the spar decks of these vessels were used by it in transporting automobiles chiefly from Detroit to Duluth. At the original hearing this protestant submitted evidence to show that its vessels had not been operated to capacity in the past for the transportation of automobiles. At the further hearing, it showed through representatives of two dealers in certain makes of automobiles and trucks manufactured prior to 1942 by the
14 Chrysler Corporation, that these dealers received shipments of motor vehicles by water at Cleveland in 1941, most of which were handled by this protestant; that they experienced no delays to such shipments, and that the service was satisfactory. With the cessation of the manufacture of automobiles for civilian use, this protestant engaged in the transportation of certain bulk commodities. At the time of the further hearing, it operated nine vessels. Five of these vessels are owned by and apparently operated for the Federal Government. Protestant has begun negotiations to reacquire these five vessels at the termination of the war. It intends to reengage in the transportation of motor vehicles when their manufacture for civilian use is resumed, and to make available vessels adequate for the transportation of such tonnage of these vehicles as may be offered.

Prior to early December, 1941, protestant D. & C. Company operated six combination passenger and package freight vessels, and, in addition, four freight vessels which it used exclusively for the carriage of motor vehicles between Detroit, Cleveland, and Buffalo. Three of the latter vessels were chartered from applicants. At the time of the further hearing it was operating five combination passenger and package freight vessels, the Government having requisitioned two of its vessels (one, a combination passenger and freight vessel, and the other, an automobile carrier), the charters on the other three automobile carriers having been canceled or relinquished. This protestant contends that it has in the past supplied sufficient facilities to meet the needs of shippers of motor vehicles served by it and states that it intends, insofar as it is capable of doing so, to make facilities or their

equivalent available at the termination of the war. The testimony of this protestant with respect to its plans for the future was submitted by its general manager and was based upon information obtained by him from protestant's president. It was objected to by applicants as hearsay. The objection is renewed by them upon brief. From a practical standpoint the witness, having knowledge, acquired in the course of his employment as a responsible official of protestant, of its present and past operations, and, so far as they can be determined with any degree of certainty, of its future operations, was sufficiently qualified to testify generally as to this protestant's plans or intentions with respect to providing facilities for the transportation of motor vehicles when the war terminates. The objection, therefore, is overruled. This protestant has in the past transported automobiles on its combination passenger and freight vessels, and at the further hearing expressed the opinion that it would be able adequately to provide for the needs of the Army in the transportation of motor vehicles between Detroit and Lake Erie ports during 1943. The evidence shows, however, that generally during the summer tourist season, extending from June to September, this protestant transports many passengers and their automobiles on its vessels, and in many instance there is little or no space available for other motor vehicles.

Prior to the requisition of its vessels by the Government in 1942, protestant Great Lakes Transit Corporation had been engaged in the transportation of passengers and property on the Great Lakes for more than 25 years. At the time of the further hearing it had pending before us an application for a certificate under the "grandfather" clause of section 309 (a) of the act, authorizing it to continue operations in existence on January 1, 1940, and continuously thereafter as a common carrier by water of passengers and freight between various ports on the Great Lakes, including operations as a common carrier of automobiles from Detroit to Buffalo. One of its vessels was especially equipped to carry motor vehicles. It also transported motor vehicles on its combination passenger and package freight vessels or package freight vessels. This protestant has not abandoned its transportation business but expects to resume operations when vessels again become available and to provide sufficient facilities to meet the needs of shippers. It contends that its operating rights under the "grandfather" provisions of the act are entitled to protection and that these applications should, therefore, be denied. Since the further hearing, as hereinbefore indicated, the Government has returned to this protestant four of its vessels, and by letter of August 10, 1943, protestant's counsel advised that the expectation was that these vessels would be in operation before the close of the 1943 season.

The record establishes that there was a definite need for applicants' vessels in the transportation of motor vehicles between Detroit and Lake Erie ports prior to the cessation of the manufacture of motor vehicles for civilian use. It also shows with reasonable certainty that there will be a like need for them in that service at the termination of the war or when normal production and shipment by water of motor vehicles for civilian use are resumed. Witnesses representing manufacturers producing the bulk of the automobiles at Detroit testified as to this need in the future, not only as to transportation between Detroit and Lake Erie ports but also as to Lake Superior ports; that in the absence of applicants' vessels it would not have been possible for the water carriers to have handled the automobiles offered for transportation in 1940 and 1941, and that with the resumption of automobile manufacture the use of applicants' facilities will be necessary in the handling of such traffic. Refusal of applicants' right to initiate such operations with their own vessels might seriously impair their investment in those vessels and while that fact is not controlling, the refusal would according to this record deprive shippers of necessary transportation facilities which would not in the public interest.

Although the expectation of protestants is that considerable tonnage will be available at the termination of the war, there is admittedly much uncertainty as to the length of time that may be required to procure and place in operation on the Great Lakes additional vessels adapted to their needs. Replacement by protestant D. & C. Company of its combination passenger and freight vessels alone will not adequately meet the needs of this service when conditions become normal, for the reason that during a substantial part of the navigation season such vessels were used in the past, and doubtless will again be used, for the transportation of passengers and their automobiles, leaving them with little, or no carrying capacity for other motor vehicles. So far as appears, this also was and will be true of the combination passenger and freight vessels operated by protestant Great Lakes Transit Corporation. At certain times during the period prior to 1942, there were insufficient vessels, including applicants' vessels, fully to meet the needs of shippers of motor vehicles and similar situations may likely arise at such times in the future after the war upon the resumption of normal production of motor vehicles. As has been stated, applicants own three vessels which can be reconverted into motor vehicle carriers without much difficulty. The necessary materials and equipment for that purpose have been retained. It is their intention to so reconvert upon termination of the present emergency. Unquestionably, the public

interest will be adversely affected if, after the production of automobiles is resumed, protestants are delayed in acquiring the additional facilities which they indicate will be necessary to meet the increased demands for transportation.

The issuance by us of a certificate is not restricted by Section 309 (c) to present public convenience and necessity, but extends also to future public convenience and necessity. That section provides that upon application we shall issue a certificate to any qualified applicant if we find that the applicant is fit, willing, and able properly to perform the service proposed, and to conform to part III of the act and the requirements, rules and regulations thereunder, and that the proposed service is *or will be* required by the present *or future* public convenience and necessity. Applicants have temporary authority to operate as common carriers in the transportation of motor vehicles as heretofore stated. Temporary authority would probably be adequate during the existing emergency insofar as the service is required by present public convenience and necessity. However, such temporary authority extends only until December 31, 1944, the present expiration date of the Second War Powers Act, 1942. Unless Congress extends such expiration date beyond December 31, 1944, temporary authority may not be granted thereafter under section 311 (a) for more than 180 days. Upon the facts here presented, we are not persuaded that temporary authority will meet the requirements of future public convenience and necessity. We are of the opinion that applicants have made a case that the proposed service between these ports will be required and that we would be placing an undue burden on applicants to compel them to renew their applications and present their evidence again at the expiration of the aforesaid temporary authority. These conclusions find support in Arco Auto Carriers, Inc., Extension—Kenosha—Racine, Wis. (not printed), decided December 18, 1943, wherein division 5 said:

The examiner found that public convenience and necessity do not require applicant's proposed operation. His finding appears to have been based in a great measure on the fact that since the date of hearing the production of automobiles for civilian use has been discontinued. "While the curtailment in the production of automobiles during the national emergency results in a temporary diminution in the demand for the transportation of such commodities, it has not been our policy to deny an application because of the changed conditions resulting from the war, if the evidence otherwise supports a grant thereof. Normal conditions including the demand heretofore experienced are bound to recur and applicant should not then be expected to incur the cost and delay of a further proceeding."

We find that applicants were not in bona fide operation on January 1, 1940, as common or contract carriers by water, in the performance of transportation subject to the provisions of part III of the act. We further find that present and future public convenience and necessity require operation by applicants as common carriers by water of motor vehicles by self-propelled
16 vessels in interstate or foreign commerce between Detroit and Lake Erie ports, and between Detroit and Lake Superior ports; that applicants are fit, willing, and able properly to perform such operations, and to conform to the requirements of part III of the act and of our rules and regulations thereunder; and that such operations will be consistent with the public interest and the national transportation policy declared in the act.

An appropriate certificate will be issued to applicant T. J. McCarthy Steamship Company for itself and as managing agent of applicant Automotive Trades Steamship Company. The applications in other respects will be denied.

An appropriate certificate and order will be issued.

MILLER, Commissioner, dissenting in part:

I dissent from this report to the extent it finds that the future public convenience and necessity require the operation proposed by applicants. In my opinion there is no evidentiary support in the record for such a finding. The findings in the prior report of division 4, 250 I. C. C. 550, should be affirmed in all respects.

The fact that applicants' vessels were used as they were to carry automobiles prior to the present emergency and may be needed for that service when the production of automobiles is resumed does not warrant the conclusion that there will be need for the operation of such vessels by applicants as a new carrier in the field. That will not increase the amount of service formerly provided. Those vessels may be operated as formerly by existing authorized carriers under charter. Adequate service has been provided by protestants in the past and there is nothing in the record to show that they will be unable to provide similar service in the future.

All of the conditions set forth in the record are abnormal due largely, of course, to the war. Most of the vessels, including those of applicants, formerly used in the transportation of automobiles on the Great Lakes have been converted for, and are being used in, the transportation of other commodities in connection with the war effort. It is indefinite as to how long present conditions will continue or whether applicants will be able to exercise the authority herein granted upon expiration of their existing temporary authority. In my opinion the decision of the majority is based upon too many assumptions and suppositions to be sound as a matter of law.

After the war there undoubtedly will be a period of readjustment of the operations of many water carriers and the resumption of suspended operations in many instances will no doubt be delayed. In this or similar cases, if an immediate and urgent need for service exists, temporary authority to provide such service may be granted under the provisions of section 311 (a). However, any consideration which we may now give to the conditions above referred to does not afford a sound basis for the granting of certificates under section 309 (c) permanently authorizing the institution of new operations.

I am authorized to state that Chairman Patterson and Commissioners Mahaffie and Rogers join in this expression.

CERTIFICATE AND ORDER

At a General Session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 7th day of March, A. D. 1944

No. W-592

T. J. MCCARTHY STEAMSHIP COMPANY COMMON CARRIER APPLICATION

No. W-729

AUTOMOTIVE TRADES STEAMSHIP COMPANY COMMON CARRIER APPLICATION

It appearing, That on November 25, 1942, division 4 made and filed its report and issued its order in the above-entitled proceedings, denying the applications therein, and that on March 1, 1943, the Commission, by appropriate order, reopened these proceedings for further hearing, and postponed the effective date of the order denying the applications until the further order of the Commission;

It further appearing, That further hearing in these proceedings has been held, and that the Commission, on the date hereof, has made and filed its report on further hearings containing its findings of fact and conclusions thereon, which said report on further hearing and the aforesaid report of November 25, 1942, are hereby referred to and made parts hereof:

It is hereby certified, That public convenience and necessity require the operation by T. J. McCarthy Steamship Company, for itself and as managing agent of Automotive Trades Steamship Company, as a common carrier by self-propelled vessels, in

interstate or foreign commerce, in the transportation of motor vehicles between Detroit, Mich., and all ports on Lake Erie, and between Detroit and ports on Lake Superior.

It is ordered, That T. J. McCarthy Steamship Company, for itself and as managing agent of Automotive Trades Steamship Company, be, and it is hereby, authorized to perform the service specified above, subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached by this Commission to the exercise of such authority.

It is further ordered, That the holding of this certificate by T. J. McCarthy Steamship Company, for itself and as managing agent of Automotive Trades Steamship Company, be, and it is hereby, conditioned upon the exercise of the authority specified above, and upon compliance by said carrier with the requirements of the Interstate Commerce Act and the orders, rules, and regulations of the Commission thereunder.

It is further ordered, That the applications except to the extent granted, be, and they are hereby, denied.

And it is further ordered, That this certificate and order shall take effect and be in force from and after June 3, 1944.

By the Commission.

[SEAL] W. B. BARTEL, *Secretary.*

18 *Exhibit B to complaint*

INTERSTATE COMMERCE COMMISSION

No. W-592 [1]

T. J. McCARTHY STEAMSHIP COMPANY

COMMON CARRIER APPLICATION

Submitted October 30, 1942. Decided November 25, 1942

Applicants found not to have been in bona fide operation on January 1, 1940, as common or contract carriers by water, in the performance of transportation subject to the provisions of part III of the act, and present or future public convenience and necessity not shown to require such operations. Applications denied.

Sparkman D. Foster for applicants.

J. M. Arnold, Milton P. Bauman, S. S. Eisen, and Charles E. Lewis for protestants.

[1] This report also embraces No. W-729 Automotive Trades Steamship Company Common Carrier Application.

Arthur R. Eldred, Stanley Carpenter, Frank W. Sullivan, Merril Shepard, A. R. Scheff, and F. C. Strickroot for interveners.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS PORTER, MAHAFFIE, AND MILLER

BY DIVISION 4:

Exceptions to the report proposed by the examiner were filed by certain protestants. Applicants replied and the issues were argued orally. Our conclusions differ from those recommended by the examiner.

By separate applications filed May 31, 1941, as amended October 18, 1941, T. J. McCarthy Steamship Company and Automotive Trades Steamship Company, hereinafter referred to as the McCarthy Company and the Automotive Company, respectively, of Detroit, Mich., seek certificate of public convenience and necessity under the provisions of section 309 (a) or 309 (c) of the Interstate Commerce Act authorizing operations as common carriers by water, in interstate or foreign commerce, in the transportation of motor vehicles as described in the footnote,[2] between Detroit, on the one hand, and Cleveland, Ohio, Buffalo, N. Y., and Erie, Pa., on the other hand, and between Buffalo and Cleveland. On oral argument applicants indicated that they desire authority to serve other points on the Great Lakes such as Duluth, Minn. The Detroit and Cleveland Navigation Company, hereinafter called the D. & C. Company, and Nicholson Universal Steamship Company oppose the granting of the applications. The Cadillac Cartage Company—Marine Division, rail carriers in official territory, Great Lakes Transit Corporation, and Minnesota Atlantic Transit Company intervened at the hearing but offered no evidence. By consent of the parties the applications were consolidated for hearing and will be disposed of in this report.

Between March 1933, and February 1942, T. J. McCarthy, president and owner of the controlling interest of both applicants, was affiliated with the D. & C. Company in a soliciting capacity. In February 1937, an agreement was executed whereby the D. & C. Company gave to the McCarthy Company exclusive solicitation rights, for a six-year period, on automobiles to be transported by them between Detroit and Lake Erie ports. Under this agreement the McCarthy Company received a fixed percentage of the gross revenues obtained for the transportation of automobiles, and was restricted to soliciting automobile traffic solely for the D. & C. Com-

[2] Automobiles, passenger; chassis, commercial; chassis, freight automobile; chassis, passenger automobile; hearses, automobile; trailers, motor vehicle; trucks, panel or commercial delivery; truck, motor vehicle; set up, on wheels.

pany. On the same date the McCarthy Company and the Automotive Company entered into a charter agreement with the D. & C. Company whereby the D. & C. Company chartered from applicants two vessels for the 1937 season with an option to renew the charters from year to year through the 1942 season. These options were exercised every year. A third vessel owned by applicants was operated by them in the bulk trade during 1938 and 1939, but also was chartered to the D. & C Company for the 1940 and 1941 seasons. On February 4, 1942, after the manufacture of new automobiles had ceased, the solicitation agreement and the charters of the two vessels were canceled by mutual consent of the parties.

Under the solicitation agreement T. J. McCarthy advertised and held himself out as manager of the automobile division of the D. & C. Company. Under the charter agreements applicants' vessels were operated by and under the exclusive control and supervision of the D. & C. Company. The traffic handled was moved under rates and bills of lading issued by the D. & C. Company. While applicants claim operating rights based upon solicitation of traffic by McCarthy and upon the operation of the vessels owned by applicants while under charter to the D. & C. Company, the transportation performed by these vessels before and on January 1, 1940, was performed by the D. & C. Company and not by applicants. Applicants acquired no rights to a certificate under the provisions of section 309 (a) because of the operations of their vessels while under charter to the D. & C. Company. That part of each application filed under the provisions of section 309 (a) must, therefore, be denied, as applicants were not in bona fide operation as common or contract carriers by water on January 1, 1940.

Under section 309 (c) an applicant must show that the proposed service is or will be required by the present or future public convenience and necessity. Applicants introduced several witnesses who testified that applicants' vessels were essential for the transportation of automobiles from Detroit to Lake Erie ports in the past and that these vessels would again be needed after the present emergency when the normal production of automobiles is resumed. Protestants submitted evidence tending to show that their own vessels have not been operated to capacity in the past and claim that no one can predict the necessity for additional service after the war. The evidence submitted in this proceeding is not sufficient to support a finding that the present or future public convenience and necessity require operation by applicants. This is particularly true because of the cessation of the manufacture of automobiles and their shipment by water.

A person engaged in chartering vessels to other carriers subject to the act is itself not subject to the provisions of part III of the act. The carrying of bulk commodities when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities and no nonbulk commodities is exempt under section 303 (b). Applicants may continue such operations without any authorization from us.

We find that applicants were not in bona fide operation on January 1, 1940, as common or contract carriers by water, in the performance of transportation subject to the provisions of part III of the act, and have failed to show that present or future public convenience and necessity require such operation. The applications, therefore, will be denied. An appropriate order will be issued.

PORTER, Commissioner, dissenting in part:

While I agree with the majority to the extent the report finds that applicants were not entitled to certificates or permits permitting continuance of operation as common or contract carriers by water under so-called "grandfather" rights, I cannot agree with the finding that applicants have failed to show that present or future public convenience and necessity require such operations. The majority states that the evidence submitted in this proceeding is not sufficient to support a finding that the present or future public convenience and necessity require operation by applicants. In my opinion the facts of record amply support a contrary finding.

Applicants' own three vessels equipped to carry passenger automobiles. Two of those vessels were chartered by the D. & C. Company from 1937 to February 4, 1942. The third vessel was chartered by that company for the 1940 and 1941 seasons. One of applicants' vessels was, when purchased, an automobile carrier, but the other two were open-hold bulk freighters, which were later converted into automobile carriers at an approximate cost of $40,000 each. As of September 30, 1941, applicants' total assets and liabilities approximated $246,000 and $111,000. From January 1 to September 30, 1941, applicants had gross operating revenues aggregating $104,546.

Witnesses on behalf of the Ford Motor Company, Chrysler Corporation, and the Hudson Motor Car Company, representing approximately 85 percent of the automobile production in Detroit, testified in support of the applications. They urge that applicants be issued authority to operate their vessels in the transportation of automobiles between points on the Great Lakes. They

testified that in the absence of applicants' vessels it would not have been possible for the water carriers to have handled the automobiles offered for transportation in 1940 and 1941. They urge that with the return of normal conditions, and the resumption of automobile manufacture, the use of applicants' facilities will be necessary in handling the automobile traffic on the Great Lakes.

During 1939, 1940, and 1941, respectively, 44,147, 77,441, and 85,493 automobiles, respectively, were carried on the vessels chartered by applicants to the D. & C. Company. Of the total number of automobiles carried by the D. & C. Company the proportion handled on the vessels chartered from applicants were 60 percent in 1937, 45 percent in 1938, 64 percent in 1939, 74 percent in 1940, and 71 percent in 1941. From the above it is obvious that prior to the cessation of the manufacture of automobiles, applicants' vessels were utilized to a large extent in the transportation of such vehicles.

Section 309 (c) provides that upon application the Commission shall issue a certificate to any qualified applicant if the Commission finds that the applicant is fit, willing, and able properly to perform the service proposed, and that the proposed service is or will be required by the present or future public convenience and necessity. The statute does not restrict the issuance of a certificate to present convenience and necessity. It also extends it to future convenience and necessity. It is true there is no production of automobiles at the present time and, therefore, no apparent necessity for the operation of applicants' vessels in the transportation of such traffic. In the light of past performance, however, it is clear that upon the resumption of automobile manufacture, at the termination of the present national emergency, the use of applicants' vessels will again be necessary in the transportation of automobiles. Accordingly a certificate of public convenience and necessity should be issued to T. J. McCarthy Steamship Company in the capacity of managing agent for itself and on behalf of the Automotive Trades Steamship Company and the application of the latter should be dismissed.

ORDER

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 25th day of November, A. D. 1942

No. W–592

T. J. McCARTHY STEAMSHIP COMPANY COMMON CARRIER / APPLICATION

No. W–729

AUTOMOTIVE TRADES STEAMSHIP COMPANY COMMON CARRIER APPLICATION

T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company having filed applications under the provisions of section 309 (a) and 309 (c) of the Interstate Commerce Act for certificates of public convenience and necessity authorizing operations by them as common carriers by water, a hearing having been held, and full investigation of the matters and things involved having been made, and said division, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That said applications be, and they are hereby, denied.

It is further ordered, That this order shall take effect and be in force from and after January 18, 1943.

By the Commission, division 4.

[SEAL] W. P. BARTEL, *Secretary.*

21 *Exhibit C to complaint*

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket Nos. W–592 and W–729

Applications of T. J. McCarthy Steamship Company and Automotive Trades Steamship Company for Certificates to Operate as Common Carriers in the Transportation of Property Between Ports on the Great Lakes

BRIEF ON BEHALF OF APPLICANTS, T. J. M'CARTHY STEAMSHIP COMPANY AND AUTOMOTIVE TRADES STEAMSHIP COMPANY

Statement of Case

Separate applications were filed under Section 309 (a) and (c) of Part III of the Interstate Commerce Act with the Commission by T. J. McCarthy Steamship Company No. W–592 and Automotive Trade Steamship Company No. W–729. The T. J. McCarthy Steamship Company is a Michigan corporation and sole owner of the Steamer George W. Mead. The Automotive Trades Steamship Company is a Delaware corporation and sole owner of the Steamers T. J. McCarthy, ex Morris S. Tremain and the George H. Ingalls.

T. J. McCarthy owns 85% of the stock in the Automotive Trades Steamship Company and 80% of the stock in the T. J. McCarthy Steamship Company. Each of the applicants claimed to have been in bona fide operation as a common carrier by water during the time specified in subdivision (a) of Section 309 and to have been in continuous operation since that time.

Examiner M. J. Walsh, in his proposed report, recommended that the Commission should find that

"Applicants are common carriers; that public convenience and necessity require operation by applicants as common carriers of motor vehicles by self-propelled vessels in interstate or foreign commerce between points on the Great Lakes; that applicant is fit, willing, and able properly to perform such transportation service and to conform to the provisions of part III of the act and the requirements, rules, and regulations of the Commission thereunder; and that appropriate certificates of public convenience and necessity should be issued, subject, however, to general conditions which are necessary to carry out, with respect to continuation of applicants' operations, the requirements of part III of the act, and the orders, rules, and regulations of the Commission thereunder." Sheet 7—Proposed Report.

Exceptions to the proposed report were filed by the Detroit and Cleveland Navigation Company and the Nicholson Universal Steamship Company and the case was orally argued before the Commission.

Subsequently, and on November 25, 1942, Division 4, in its decision sustained the exceptions filed to the proposed report, saying on sheet 3, as follows:

"We find that applicants were not in bona fide operation on January 1, 1940, as common or contract carriers by water, in the performance of transportation subject to the provisions of part III of the act, and have failed to show that present or future public convenience and necessity require such operation. The applications, therefore, will be denied."

In the same decision it was likewise stated on sheet 3:

"A person engaged in chartering vessels to other carriers subject to the act is itself not subject to the provisions of part III of the act. The carrying of bulk commodities when the cargo space of the vessel in which such commodities are transported is being used for the carrying of not more than three such commodities and no non-bulk commodities is exempt under section 303 (b). Applicants may continue such operations without any authorization from us."

22 Applicants, on January 4, 1943, filed their petition for reconsideration and rehearing and the Commission subse-

quently entered its order reopening for a rehearing and postponed until the further order of the Commission, the effective date of the order entered in said proceedings on November 25, 1942.

The rehearing took place on June 4, 1943, at Detroit, Michigan.

The Facts

It is not considered necessary to restate in detail the testimony in the original proceedings and the facts as stated in this brief will be confined primarily to the testimony at the rehearing.

At the rehearing of the case, it was shown that during the season of 1942, applicants were requested by the Motor Transport Service of the Ordnance Department of the United States Army to transport automobiles on the Great Lakes, being advised that there were not sufficient vessels to move the vehicles which the Army desired to have moved (R. 383).

Applications for grandfather rights and for a certificate under convenience and necessity was, at that time, pending and it was not necessary to obtain special authority under 311 (a) had it not been that the applicants' three vessels were then under the direction of the Office of Defense Transportation engaged in the transportation of grain from the head of the Lakes to Buffalo, the owners having made the necessary physical changes in the ships so that this could be done. Applicants were advised by the Acting Director of the Bureau of Water Carriers that in the transportation of mixed cargoes of grain and motor vehicles, it would be necessary to publish rates on grain from the head of the Lakes to Buffalo if motor vehicles were carried on the decks of loaded vessels. It was for this reason that an application was filed for special permission to transport such mixed cargoes and to publish the rates on grain on less than statutory notice, the particulars in this respect being in the files of the Commission.

The testimony further disclosed that the situation with relation to the capacity for the transportation of automobiles on the Great Lakes had vastly changed since the original hearing, there being no automobile type vessels left on the Great Lakes (R. 391). Applicant is still ready, willing and able to transport automobiles not only between Detroit and Lake Erie ports, but between Detroit and the head of the Lakes (R. 392).

At the time of the hearing, there had been removed from the automobile service through requisition and sale twenty-one vessels formerly engaged at least to some extent in that service (R. 390; Exhibit 33). At this point it might be stated that it now appears that the War Shipping Administration will return to the Great Lakes Transit Corporation four vessels formerly owned by that company which were included in the vessels mentioned in Exhibit

33. The principal protestant, Nicholson Universal Steamship Company, has sold five of its former automobile carriers to the Government, and these vessels have been converted into bulk vessels. The details of this transaction are in the files of the Commission, but for convenience reference is made to Exhibit 34.

At the rehearing, Mr. N. J. Brennan, Traffic Director of the Chrysler Corporation, again testified that with the change of conditions on the Great Lakes, particularly the fact that the various protestants had lost in all twenty-one vessels formerly available for the transportation of automobiles, that there will be a need for the service of the vessels of these applicants when the manufacture of automobiles is resumed, not only between Detroit and Lake Erie ports, but between Detroit and Lake Superior ports. Similar testimony was given by Mr. William H. Rivett, Assistant Traffic Manager of the Hudson Motor Car Company, who testified in the original proceeding. He stated that his testimony was based upon the fact that with these vessels in operation there were not enough vessels available to move the cars off the docks in 1941. Mr. E. B. Rogers, Traffic Manager of the Pontiac Motor Division of the General Motors Corporation, Pontiac, Michigan, likewise testified that in 1941, even with protestants' vessels, which are now not available, in operation along with applicants, three vessels, which were under charter to protestant Detroit and Cleveland Navigation Company, that there was quite some delay in the transportation of automobiles on the Great Lakes (R. 440). He testified that applicants' vessels were very badly needed when automobiles were being shipped in 1941 and that these vessels would be needed when the manufacture of automobiles was resumed.

23 It was further testified that under normal conditions on the Great Lakes, applicants' vessels could not be operated in the bulk trade, all of the former automobile vessels having been considered obsolete for the bulk trade which resulted in their conversion for the carriage of automobiles (R. 389). This would not apply to Great Lakes Transit Corporation's package freighters, which with the exception of one ship transported automobiles primarily on deck.

The record further shows that applicants have preserved materials from between decks and top decks of their vessels and can easily reconvert them for the automobile traffic after the emergency (R. 385).

There was testimony by certain of the protestants that they would be prepared to add ships as needed for the transportation of automobiles when their service was again required, although the witnesses were very hazy as to how this could be accomplished.

The record is clear that the protestant, Detroit and Cleveland Navigation Company, did not do this when automobiles were available, which accounted for applicants having acquired their three automobile vessels. Testimony was offered by a few small shippers that the service which was furnished them by protestants in 1941 was satisfactory. Mr. McMillan, who testified on behalf of protestant, Detroit and Cleveland Navigation Company, testified that all he knew of his company's plans after the emergency was what he had been told by someone else. He was not an officer or director of the company and had never attended any directors' meetings. His testimony was admitted by the examiner for what it was worth, but is clearly hearsay.

The principal protestant, Nicholson, Universal Steamship Company, who was the largest operator prior to 1941, has sold five of its ships which were formerly automobile carriers. While there is pending negotiations for vessels, or the deck space of vessels, no agreements have been concluded.

The Commission has ruled, through Division 4, Columbia Transportation No. W-773, that vessel owners are subject to the Act if they transport bulk commodities for more than one shipper, although, as previously pointed out, the transportation of bulk commodities by applicants was held exempt under section 303 (b), where the space of the vessel is being used for the transportation of not more than three such commodities.

Argument

The facts in the original proceedings and as developed at the rehearing, clearly show that witnesses, on behalf of all the leading shippers of automobiles, are of the belief that applicants' vessels will be needed for the transportation of automobiles upon the resumption of automobile manufacture. The situation since the original hearing has vastly changed. One of the protestants, in fact, the largest transporter of automobiles having voluntarily disposed of five of its larger automobile carriers, while the other principal carrier, or the other principal protestant, who formerly used, under charter, all three of applicants' vessels, has lost two of its ships, one, a vessel especially reconstructed for automobile transportation, by requisition.

Applicants purchased their three vessels for the transportation of automobiles, they being obsolete for bulk cargo purposes and converted them back to bulk carriers at a large expense with the cessation of the manufacture of automobiles for private use. The three vessels have been operating under the direction of the Office of Defense Transportation in the transportation of grain, for which transportation they will be obsolete after the emergency. The cost of converting to bulk commodities has been sub-

stantial and the cost of converting back to automobile transportation likewise will be substantial.

That these vessels will be vitally needed was borne out by the fact that in 1939 they transported 44,447 automobiles; in 1940, 77,841, and in 1941, 85,493, a very substantial percentage of all the automobiles carried by the Detroit and Cleveland Navigation Company during those three years, the smallest percentage being 64% in 1939.

Section 309 (c) of the Interstate Commerce Act provides that upon application, the Commission shall issue a certificate to any qualified applicant if the Commission finds that the applicant is fit, willing and able properly to perform the service proposed, and that the proposed service is or will be required by the present or future public convenience and necessity.

24 The only case touching upon the rather narrow construction placed on the language by Division 4 which we were able to find was that of Jack Cooper, Jr., and Thom Cooper, Extension: Application No. M. C. 11185 decided by Division 5 on May 30, 1942. Applicants there sought a permit authorizing an extension of operations as a contract carrier by motor vehicle of new trucks and automobiles by drive-away and truck-away methods from Detroit and Macomb County, Michigan, to Wichita, Kansas, over irregular routes. The application was granted. The Commission said in part:

"At the time of hearing, the delivery of 1942 'Models' was expected to be reduced materially. We realize, of course, that there will be few, if any, automobiles to be transported for some time due to the war. Nevertheless, we are of the opinion that Applicants, having made a case upon which we usually grant authority in circumstances such as are of record here, should be granted the authority sought for. Presumably they are in no worse condition than other automobile transporters. In other words, it will be placing an undue hardship on Applicants to compel them to present their evidence over again after conditions shall have changed."

It would appear that in view of the strong testimony offered by Applicants, the fact that they have large investments in ships purchased and converted at great expense for the transportation of automobiles, it would be unjust and unfair to at this time deny their applications and require them at some later date to file an entirely new application and await the outcome. To do this might well be ruinous to Applicants, as under normal conditions on the Great Lakes their vessels would not be used in the bulk trade.

It is respectfully submitted that the majority of Division placed entirely too limited an interpretation on the plain wording of the statute. There is no restriction against the issuance

of a certificate to present convenience and necessity, although it is submitted that the records at the rehearing show that there actually was in 1942 and in all likelihood will be in 1943, a present convenience and necessity for the operation of applicants' ships in the transportation of automobiles and motor vehicles.

In the light of the volume of traffic moved by applicants' vessels immediately before the manufacture of automobiles for public use was stopped and in the sound judgment of the men in charge of the traffic departments for all of the principal shippers, these vessels will be needed in the future. The record is equally clear that they have actually been needed even with the manufacture of motor vehicles limited principally to military purposes.

Protestants will undoubtedly raise the question, as they have in the past, that the amendment to the application is on the wrong form. When an attempt was made at the original hearing to offer testimony upon fitness, willingness and ability to perform or public convenience or necessity, strenuous objections were made and it was for this reason that the case was adjourned and an amended application filed with the approval of the Bureau of Water Carriers. Protestants, in effect, are taking the position that the application should be dismissed because of the form or forms on which they were filed. There is ample authority that applications may be amended to conform with the proofs. See Baggett Transportation Company Common Carrier Application, M. C. 76177, and Becker Transportation Company, Inc., Common Carrier Application, 26 M. C. C. 487.

It is submitted that the proper amendment to include the scope of operations has been made and that if further amendments are required to conform with the proofs the Commission, without injustice or injury to any of the protestants, has the right to make them.

For a review of the testimony at the original hearing the attention of the Commission is directed to the proposed report of the Examiner, which gives a concise history of the background of applicants.

The testimony is undisputed that applicants' vessels are obsolete under normal conditions on the Great Lakes, except for the transportation of automobiles. They were purchased and converted for that purpose—to handle the automobiles which the President of applicants had solicited for the protestant, Detroit and Cleveland Navigation Company, who declined to put on vessels necessary to take care of the traffic.

Protestants' interest in having the Commission deny applicants a certificate is presumably on the theory that if this is done that the vessels will be available for service by one of the protestants on the terms they may outline. The attitude of

two of the same protestants in this respect is strikingly illustrated in their offer to the Nicholson Transit Company, Docket W-732 for the service of their ships before the commencement of the season of 1941.

It is clear, as was pointed out by the examiner in his proposed report, that refusal of applicants' rights to initiate operations with their own vessels would seriously impair, if not entirely destroy, applicants' investment in those vessels.

It was pointed out at the oral argument before the Commission in the original proceedings that there was no desire on the part of applicants to obtain two certificates of public convenience and necessity and it is agreeable that if a certificate is issued that it be issued to either of applicants in the capacity of managing agent for itself and on behalf of the other applicant.

Request for Findings

1. That applicants are fit, willing and able properly to perform the service proposed and to conform with the provisions of the Act and the requirements, rules and regulations of the Commission.

2. That there is a present or future public convenience and necessity for the transportation of motor vehicles as a common carrier between Detroit, Michigan, and Lake Erie ports and Detroit, Michigan, and Lake Superior ports and on all routes between Buffalo, New York, and Duluth, Minnesota.

3. That applicants should be granted a certificate as a common carrier to transport automobiles on all routes on the Great Lakes between Buffalo, New York, and Duluth, Minnesota.

Respectfully submitted.

SPARKMAN D. FOSTER,
Attorney for Applicants, T. J. McCarthy Steamship Company and Automotive Trades Steamship Company, 3666 Penobscot Building, Detroit 26, Michigan.

Dated August 4, 1943.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing brief upon all parties of record in this proceeding, by mailing a copy thereof, properly addressed, to each such party.

Dated at Detroit, Michigan, this 2nd day of August, 1943.

SPARKMAN D. FOSTER,
Attorney for Applicants, T. J. McCarthy Steamship Company and Automotive Trades Steamship Company, 3666 Penobscot Building, Detroit 26, Michigan.

26 *Exhibit D to complaint*

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. W-592

Application of T. J. McCarthy Steamship Company for a Certificate to Operate as a Common Carrier in the Transportation of Property Between Ports on the Great Lakes

Docket No. W-729

Automotive Trades Steamship Company (Application to Operate as a Common Carrier by Water)

BRIEF ON FURTHER HEARING FILED BY DETROIT AND CLEVELAND NAVIGATION COMPANY AND NICHOLSON UNIVERSAL STEAMSHIP COMPANY

Opening Statement

By petition dated January 4, 1943, T. J. McCarthy Steamship Company, applicant in Docket No. W-592, sought reconsideration of and rehearing in the captioned proceedings. The basis of the aforesaid petition was an allegation "that the situation with relation to vessels for the transportation of automobiles and motor vehicles on the Great Lakes has vastly changed." Included in such allegation were the statements that vessels of the Great Lakes Transit Corporation, Nicholson Universal Steamship Company and Detroit & Cleveland Navigation Company have been requisitioned by the War Shipping Administration and/or title acquired by the United States Government; that the needs of the United States Army with respect to water transportation of motor vehicles is such that no carrier other than the applicant was able or willing to engage therein; and that under normal conditions on the Great Lakes, applicants would be unable to find any use for their ships in the bulk trade.

By order dated May 28, 1943, the captioned proceedings were assigned for rehearing at Detroit, Michigan, on June 4, 1943. At that hearing applicants submitted testimony which inexorably supported the report and findings of Division 4 of the Commission, decided November 25, 1942, dismissing the captioned applications.

Abstract of Evidence

(A) The Issues Herein

These proceedings were precipitated by the filing, by applicants, of applications under Section 309 (a) of the Act, seeking "grand-

father" rights to continue the transportation of specified commodities, including automobiles, by water on the Great Lakes. By amended applications under the "interim operating" clause of Sections 309 (a) and (c), certificates of public convenience and necessity are sought authorizing continuance of operations instituted after January 1, 1940, and existing on February 1, 1941 (R. p. 115).*

The applicants now have abandoned all claims to "grandfather" rights (R. pp. 403–404, 407). They admit that they possess no "grandfather" rights inasmuch as they were not in operation, as common carriers of automobiles, on the critical date. The applications, as they now stand, seek "interim operating" rights to continue the transportation of automobiles between the ports of Detroit, Michigan, and Cleveland, Ohio, between the ports of Detroit, Michigan, and Buffalo, New York, and between the ports of Buffalo, New York, and Cleveland, Ohio (R. p. 408).

27 At the hearing, applicants sought permission to enlarge the scope of their "interim operating" applications to also cover the transportation of automobiles between Detroit, Michigan, and all Lake Erie ports, and between Detroit, Michigan, and all Lake Superior ports (R. p. 412). This attempted amendment was made not to "grandfather" applications but to "interim operating" applications, even though applicants admit they never engaged in automobile transportation to Lake Superior ports. Upon objection duly made, the presiding Examiner stated:

"Exam. McGRATH. Back on the record, I will say at this point, gentlemen, that the Examiner is of the view that the objections raised by the gentlemen on the other side here, seem to be sound, so far as the Examiner's understanding of the applications is concerned. However, Mr. Foster, you may proceed to present your testimony as you have prepared it, and also develop, if you can, the fact that the application has the scope which you are contending it has—that is, as between Detroit and Duluth" (R. pp. 411–412 and as reiterated on page 413).

Perhaps the clearest analysis of the issues here involved is set forth in the following abstract from pages 413–415 of the record:

"Exam. McGRATH. It has not been made clear as yet to the Examiner that the original application, as amended, relates to the transportation of automobiles between Detroit, Michigan, and Duluth, Minnesota, or other ports on Lake Superior.

"Mr. FOSTER. It related to the transportation of other commodities.

"Exam. McGRATH. Yes.

"Mr. FOSTER. Not automobiles.

*Refers to page of transcript of evidence.

"Exam. McGRATH. Yes; and as the Examiner understands it, the present proceeding relates entirely or primarily at least, I will say, to the transportation of automobiles, or motor vehicles.

"Mr. FOSTER. And other commodities.

"Exam. McGRATH. And other commodities?

"Mr. FOSTER. Yes.

"Mr. EISEN. Well then, may I inquire, do I correctly understand——

"Exam. McGRATH. Just a minute.

"Mr. EISEN. Pardon me.

"Exam. McGRATH. What other commodities, counsel?

"Mr. FOSTER. Well, such a furniture, for example, when transported with automobiles, or any other commodity when transported with automobiles; anything that is covered, that is not a wholly exempt commodity.

"Exam. McGRATH. I see.

"Mr. SULLIVAN. What about package freight?

"Mr. FOSTER. Package freight as such we are not claiming.

"Mr. ELDRED. Now, if the Examiner please, may I call your attention to Exhibit B–1 to the amended application, which purports to show the commodities which are asked for; and the only commodities which are mentioned there are motor vehicles.

"Mr. EISEN. Under the interim or public convenience and necessity application.

"Mr. ELDRED. Yes.

"Mr. EISEN. And I understood that was the only thing that was to be considered here today, in view of Mr. Foster's own statement that he is not pressing the grandfather rights here today.

"Exam. McGRATH. Do you have anything further that you wish to say on that point, Mr. Foster?

"Mr. FOSTER. No."

(B) Applicants' Equipment.

Throughout this proceeding applicants strenuously emphasized the fact that they possessed certain vessels which were equipped and otherwise adapted principally for the carriage of passenger automobiles. Interwoven therewith was applicants' allegation that denial of the rights here sought would preclude the future use of the vessels in their then existing state, entirely jeopardizing and invalidating an investment of some $40,000 per vessel, the cost of converting the boats into automobile carriers. Emphasizing this contention of applicants, Commissioner Porter, in his dissenting opinion to the report of Division 4, decided November 25, 1942, said the following:

"Applicants own three vessels equipped to carry passenger automobiles. Two of those vessels were chartered by the D. & C.

Company from 1937 to February 4, 1942. The third vessel was chartered by that company for the 1940 and 1941 seasons. One of applicants' vessels was, when purchased, an automobile carrier, but the other two were open-hold bulk freighters, which were later converted into automobile carriers at an approximate cost of $40,000 each."

28 In the Spring of 1942, the applicants, recognizing the existing conditions would eliminate the availability of passenger automobiles for transportation and taking cognizance of the fact that there "would be a use for vessels in the bulk trade" removed the between deck plankings (R. p. 382). To make the vessels available for the transportation of iron ore, the applicants removed all of the center stanchions, the deck beams, the between deck elevators and in addition strengthened and renewed the bulk heads (R. p. 385). The applicants' vessels are thus practically in the same condition today that they were originally, in 1936. The vessels are therefore not adapted for the carriage of motor vehicles below decks (R. p. 386).

When the applicants purchased their present equipment, the boats were lying idle at docks in Buffalo, New York, and Cleveland, Ohio, where they had been idle for two or three years or more (R. p. 389).

In view of the present construction of applicants' vessels the boats are no longer in the category of automobile carriers but rather in the classification of bulkers.

"Q. (By Exam. McGRATH). Just for the record Mr. McCarthy, when you refer to freighters, what do you mean?

"A. (By Mr. McCARTHY). Freighters, Mr. Examiner, are——

"Mr. SULLIVAN. Bulk carriers?

"A. Bulk carriers, rather than passenger vessels. The two classifications are freighters and bulkers; and then there are automobile boats that were originally bulkers, but by reason of conversion they became automobile boats. Freighters are boats with one hold, and probably two or three compartments, and open hatches on the top, that are used generally in the transportation of bulk commodities.

"Q. (By Exam. McGRATH). In what part of the vessel would automobiles be transported in a vessel of that type—the bulker vessel?

"A. On the deck, when she is strictly a bulker; that is, on the spar deck, or the top deck. They never put any below decks.

"Q. (By Mr. FOSTER.). Now, the construction of the conventional type of vessel used on the Great Lakes, the conventional bulk type of vessel, is that the engines are aft; is that correct?

"A. Yes.

"Q. And the pilot house, and the crew's quarters for the deck crew, are forward; is that correct?

"A. Yes, sir.

"Q. And that leaves a long open space between the coal bunkers aft, and the pilot house forward?

"A. Yes, sir.

"Q. Without any interference at all?

"A. That is right" (R. pp. 387–388).

"Q. (By Mr. Eisen). Mr. McCarthy, on page 51 of the record the Examiner asked you the following questions, to which you made the following answers:

"Q. Mr. McCarthy, you have testified that all your vessels have been refitted for the carriage of automobiles.

"A. That is right.

"Q. I take it from that that they are not suitable for carrying bulk cargoes.

"A. No, not without some reconverting of them back to their original condition."

"Now I want to ask you this question: there has been a change in that situation to the extent that your boats are now bulk cargo boats, and cannot carry automobiles as heretofore unless they are reconverted back; is that right?

"A. (By Mr. McCarthy). Except on the top deck" (R. p. 416).

In view of their present construction the applicants' boats can accommodate no more than 80 automobiles per ship, and that, on the top or spar deck. This capacity is equivalent to that of the so-called freighters or bulkers (R. p. 386). Applicants' present total monthly capacity of all their vessels is approximately 640 to 720 automobiles for transportation between the ports of Detroit, Michigan, and Buffalo, New York (R. p. 388).

(C) Applicants' Present Operations

The applicants' present operations are best summarized by the following abstract of record:

"Q. (By Mr. Eisen). Now on pages 189 and 190 of the record Mr. Foster asked you—I presume referring to your operations other than in the transportation of automobiles—

29 'In other words, you were operating that vessel about as nearly as one could as a tramp steamer?' Then there was an objection, and you said, 'Yes.'"

"A. (By Mr. McCarthy.) What vessel was that?

"Q. The vessel that you were transporting bulk freight in.

"A. Oh, yes.

"Q. That is correct, is it not?

"A. Yes, sir. That was the Ingalls.

"Q. And then on page 190 of the transcript, you defined a tramp steamer as follows: "A tramp steamer would be—you call a tramp

steamer one that not assigned to any port, to any particular and definite trade, working particularly for one shipper or one or two shippers, but you might even get horse manure if you got the right rate and carry it and be glad to have it, or stones, or bulk commodities suitable for dropping into open hatches and lifting out again. As a matter of fact, you could carry steel on that boat, package steel, but there was none offered and we couldn't get any.

"Now, is your operation at the present time other than automobiles any different from that?

"A. We are operating at the present time more or less under the ODT.

"Q. I understand, but——

"A. (Continuing.) And our commodities, the commodities that we carry, have got to be approved by the ODT, or at least have got to be regulated by them.

"Q. Well, other than by reason of any ODT regulations, are you operating any differently? In other words, are you assigning steamers to any particular port, or operating a regular run on schedules?

"A. We go by Detroit with a shipment for Buffalo.

"Q. You go by Detroit?

"A. Yes, sir, and we stop here if there are automobiles to be picked up and taken on to Buffalo.

"Q. But you still run your irregular so-called tramp service, do you not?

"A. Wherever there is grain, at whatever port the grain originates, on to whatever destination it is assigned; but it is not perhaps as broad, as to the 'tramp' end of it, as was originally asked, at that time.

"Q. The only difference, then, is the difference that may be necessitated by the ODT regulations; is that correct?

"A. Yes, sir" (R. pp. 417-418).

"Q. (By Exam. McGRATH.) To what ports do you expect to contemplate handling automobiles in these vessels that have been converted for the handling of iron ore,—or do you not intend to use them for that purpose?

"A. (By Mr. McCARTHY.) Yes, sir. Up until the present time, the vessels that have been converted to carry ore—that is, two of the vessels that have been converted to carry ore are still in the grain trade, with the permission of the government authorities, and we can carry automobiles from Detroit to Buffalo on those ships.

"Q. (By Exam. McGRATH.) Well, is it the purpose to use those vessels intensively this season for the carriage of ore?

"A. Yes.

"Q. (By Mr. FOSTER.) I will ask you to state whether or not, if you were certified as an ore carrier and required to carry ore, it

would be possible for you to schedule your vessels to Buffalo and Cleveland, and to likewise carry automobiles on the decks of those vessels, along with the iron ore?

"A. (By Mr. McCarthy.) Yes, sir.

"Q. (By Mr. Eisen.) Are any of the ore carriers, Mr. McCarthy, to your knowledge, carrying automobiles on their spar decks to Buffalo?

"A. They are not permitted to do so at the present time, as I understand it.

"Q. And none of them are?

"A. No, sir" (R. pp. 419, 420, 421).

Since the last hearing in this proceeding the applicants have transported automobiles from Detroit, Michigan, to Buffalo, New York, only (R. p. 422).

(D) The Current Transportation of Automobiles on the Great Lakes

The applicants were requested, by the Army, during 1942, to transport military vehicles from the port of Detroit, Michigan, to the port of Buffalo, New York. Those were the only ports that the applicants were able to carry automobiles from and to. Throughout the entire season the applicants handled twelve loads of automobiles to the port of Buffalo, New York, aggregating 950 vehicles. (R. pp. 383–384).

The applicants were requested, by the Army, to supply service for the transportation of military vehicles from Detroit, Michigan, to Buffalo, New York, wholly because of unavoidable contingencies which disrupted the automobile transportation service of the Detroit and Cleveland Navigation Company. In 1942 the Navy requisitioned the Steamer Greater Buffalo, owned by the Detroit and Cleveland Navigation Company, for conversion into an aircraft carrier. Prior to this action the Detroit and Cleveland Navigation Company maintained a nightly service between Detroit, Michigan, and Buffalo, New York (R. p. 516). The loss of the Steamer Greater Buffalo necessitated a revision of the existing schedule, reducing boat sailings from nightly service to three sailings per week. This action, of course, automatically and drastically curtailed the automobile carrying capacity of the Detroit and Cleveland Navigation Company between Detroit, Michigan, and Buffalo, New York (R. p. 517). This resulted in need for additional carrier facilities.

For the 1943 navigation season the Detroit and Cleveland Navigation Company made arrangements for the operation of two vessels in the Detroit-Buffalo service and again is operating a nightly sailing. The Detroit and Cleveland Navigation Company has a present average carrying capacity per evening or per

boat of 125 jeeps or 75 ambulances or 50 two and one half ton trucks (R. p. 518). The Detroit and Cleveland Navigation Company is presently scheduled to move 600 two and one half ton trucks and 225 jeeps for the account of the Army with the understanding that this number will be greatly augmented as the season progresses. The present facilities of the Detroit and Cleveland Navigation Company are adequate to wholly take care of the automotive transportation needs of the Army between Detroit, Michigan, and Lake Erie ports (R. p. 519).

(E) Protestants' Equipment.

Fourteen of the vessels formerly owned by the Great Lakes Transit Corporation have been taken over by the Government in the prosecution of the war. Also taken over by the Government were the Steamers Fitch and one large passenger vessel of the Detroit and Cleveland Navigation Company. Five of the vessels of the Nicholson Universal Steamship Company were bought by the United States Maritime Commission (R. p. 391).

The Nicholson Universal Steamship Company is presently operating nine vessels in transportation activities on the Great Lakes, including the Steamers Hewitt, Sonoma, Penobscott, Coralia, Crescent City, Brown, Sultana, Sonora and Arthur Orr (R. p. 525). The vessels Hewitt, Sonoma, Penobscott, Coralia and Crescent City are operated by the Nicholson Universal Steamship Company even though title thereto vests in the United States Maritime Commission. It is the intention of the Nicholson Universal Steamship Company to continue to operate the entire present fleet of nine vessels, on the Great Lakes, after the termination of the present war. Activities have already been undertaken to insure the reacquisition by Nicholson Universal Steamship Company of the five vessels presently owned by the United States Maritime Commission (R. p. 526).

Of material bearing on the question of protestants' automobile transportation facilities during the present abnormal periods and also after the culmination of the present war, is the statement of Vice President Hewitt of the Nicholson Universal Steamship Company, at pages 527–530 of the record, as follows:

"There has been a very material change on the lakes within the past few weeks. You will recall that during the last hearings, there was a great deal of discussion concerning the bulk cargo carrier situation. By that I mean, prior to 1940 the bulk cargo carriers were utilized for the transportation of automobiles.

"Q. (By Mr. Eisen.) You mean by that, do you not, that they were put on the spar decks of the bulk cargo carriers?

"A. (By Mr. Hewitt). Yes, sir.

"The automobile carriers under charter arrangements had the spar decks of the bulkers made available to them for the transportation of automobiles. This of course gave us a large pool of vessel space. These bulk cargo carriers always considered themselves exempt from regulation under the theory that they were contract haulers. Because of the pending water legislation in Congress which finally took the form of Part III of the Interstate Commerce Act, the bulkers were hesitant about carrying automobiles on their spar decks because of the theory that such carriage would jeopardize their claim that they were contract carriers, and therefore exempt from regulation. For this reason there were no automobiles carried on outside bulkers. We of course carried automobiles on the spar decks of our bulker fleet.

31 "In March of this year the Interstate Commerce Commission, by its decision in the Columbia Transportation Company contract carrier application, Docket W-773, caused a complete change in the situation. In that decision the Commission found that the Columbia Transportation Company, and others in a like category, were common carriers in the transportation of commodities generally, except of course where they transported commodities in bulk in full cargo lots for one shipper. To the extent that the bulk cargo carriers have been found to be common carriers, there is no longer any danger of automobile transportation on the spar decks affecting their status. As a result of that decision, we have contacted several of the bulk cargo carriers and negotiated with them for the carriage of automobiles on their spar decks, when and as automobiles are again manufactured and transported.

"I can say that we have found a very receptive attitude on the part of the bulk carriers. As a matter of fact, our handling with one of the larger carriers has gone beyond the negotiation stages, and has practically reached a final settlement, the only thing that is left being the drawing up of the formal contract. This particular arrangement will make available to us a fleet of not less than ten boats. In addition to this one particular fleet, we have under way negotiations with other bulkers, and, all in all, we are pretty sure of having available to us when automobiles start moving, not less than thirty boats, with a reasonable certainty of more boats than will actually be required for the transportation of automobiles throughout the year, including the peak periods.

"Right here, when I refer to peak periods I am of course referring to the peak periods of the past. I do not know, and I doubt whether anybody knows, if there will be peak periods in the future, or how and when automobiles will be manufactured and tendered for transportation after the war. My own personal opinion is

that for a good many years the manufacture will be stabilized without changeover of automobile production, and that automobiles will roll off the assembly lines without the hills and valleys as shown on the transportation charts included in the previous exhibits in this case.

"Q. Now, Mr. Hewitt, do you have any other statement that you desire to make for the record?

"A. The Nicholson Universal Steamship Company is known as a specialized carrier of new automobiles, and, with the cessation of hostilities, the Nicholson Universal Steamship Company intends to see that, for such tonnage as may be offered to it for transportation over the Lakes, vessels are available to adequately handle such tonnage which may be offered.

"Q. Do you believe that you will be in a position to make available to the trade, the shipping trade, all of the facilities that will be required during the post-war period?

"A. We do, yes, sir. We feel that we will be able to take care of the situation as it may unfold from month to month, or from year to year, as well in the future as we have in the past."

(F) Shippers' Testimony

(1) Automobile Manufacturers

Applicants again presented as witnesses three representatives of the traffic departments of automobile manufacturers. These witnesses again unequivocally admitted that they possessed no information as to when their companies would go back to the commercial production of passenger automobiles. They had no knowledge concerning the quantity of automobile vessels that would be available for transportation if and when their companies resumed passenger automobile production. They had absolutely no knowledge of what the transportation conditions might be upon the return of normalcy. They had no knowledge of what the needs of their companies would be as related to the number of ships or ship carrying capacity that might be required after the termination of the war. They had not the slightest knowledge of the post-war shipping program being planned for the Great Lakes by the ship owners and operators. All that they could say was that they would like to see the applicants granted operating rights, for no other causes apparently, than personal reasons (R. pp. 429, 432, 433–435, 444).

(2) Automobile Dealers

Two automobile dealers, engaged in the handling of Chrysler products and possessing intimate contacts and relationships with

their field of endeavor, for approximately the past ten years, testified that it is the dealer and not the traffic department of the manufacturer that routes passenger automobiles. The
32 dealer instructs the factory as to the method and manner of the transportation desired. The dealer, not the manufacturer, pays the freight charges (R. pp. 494, 501).

These witnesses, who represent the only individuals that have a real, rather than an academic, interest in the transportation of passenger automobiles, testified as follows, with respect to the nature of the service that they received in the past from the established existing common carriers:

"Q. (By Mr. EISEN.) In so far as your products and the service which you have received in your particular connection in the way of water transportation are concerned, would you say that, in your opinion, there was any need for any additional carriers in the field?

"A. (By Mr. HUGHES.) Why, I would answer that question by saying that we were taken care of promptly, and with good service.

"Q. (By Mr. EISEN.) Am I to construe that answer, then, Mr. Hughes, as meaning that you do not think there is a need for any additional service?

"A. Well, I would answer that as I did before, by saying that we had no hold-up of the cars, but on the contrary, they came through very promptly, right on schedule.

"Q. And the service was satisfactory?

"A. Yes, sir.

(R. pp. 496-497)

"Q. (By Mr. EISEN.) Now, what have you to say, Mr. Feder, with respect to the service which you received during 1941 from the Nicholson Universal Steamship Company?

"A. (By Mr. FEDER.) It was very satisfactory.

"Q. Did you have any delays, or any hold-ups?

"A. No.

"Q. Did you have any serious complaints?

"A. None.

"Q. Or any complaints of any nature whatsoever?

"A. No.

"Q. Now predicated upon your own experience in 1941, in so far as your own particular business needs were then concerned, do you know of any reason why any additional boats or boat lines were or are needed to carry automobiles?

"A. Not for our needs, no, sir" (R. p. 502).

It is interesting to note that the testimony submitted by Mr. Feder, last above quoted, relates to a dealer, who in 1941 sold 7,000 automobiles and shipped over 5,000 thereof by water, all via the

facilities of the Nicholson Universal Steamship Company (R. p. 501).

(G) Position of the Protestants

(1) Nicholson Universal Steamship Company

The position of the Nicholson Universal Steamship Company is typified by the following statement appearing on page 530 of the record made by Vice President Hewitt, which should be read in conjunction with the abstract of his testimony, reproduced in Section E of the Abstract of Evidence hereof:

"The Nicholson Universal Steamship Company is known as a specialized carrier of new automobiles, and, with the cessation of hostilities, the Nicholson Universal Steamship Company intends to see that, for such tonnage as may be offered to it for transportation over the lakes, vessels are available to adequately handle such tonnage which may be offered."

(2) The Detroit and Cleveland Navigation Company

The position of the Detroit and Cleveland Navigation Company is clearly enunciated by the testimony of General Manager James McMillan, here reproduced from pages 538 and 539 of the record:

"The company has in the past always supplied the trade with sufficient equipment to take care of the existing needs, and it fully intends to do likewise after the conclusion of the war. At the present time we are operating the steamers Greater Detroit, Eastern States, Western States, City of Detroit III, and City of Cleveland III. These vessels are all combination package freight and passenger vessels, and are all capable of transporting automobiles. In the past we have carried automobiles on these vessels, and it is our current intention to restore the former facilities for the benefit of the shipping public.

33 "Q. (By Mr. Eisen). Do you mean, the former automobile carrying facilities?

"A. (My Mr. McMillan). Yes, sir.

"Q. Making available after the war facilities equivalent to your former facilities——

"A. Yes.

"Q. Prior to the outbreak of the war?

"A. Yes, sir. In 1941 we operated six combination passenger and freight vessels, and in addition, four freight vessels exclusively, for the carriage of new automobiles.

"Q. And it is the intention of your company to make such facilities, or equivalent facilities, available, as they may be required after the cessation of the present hostilities—is that correct?

"A. Yes, sir."

(3) The Great Lakes Transit Corporation

The Great Lakes Transit Corporation has not abandoned its transportation business and intends to actively resume when ships again become available. This line has been in operation as a common carrier of freight on the Great Lakes since 1916. It has filed for "grandfather" rights in Docket No. W–154 and action of this Commission, protecting that line's "grandfather" rights, despite an interruption in service which resulted from causes beyond the control of that carrier, is anticipated. That line submits that "its existing 'grandfather' rights are entitled to protection against the permanent competition of another carrier operating under temporary rights only because former operators are prohibited from engaging in business by a governmental mandate" (R. p. 447). The following abstract from pages 467–468 is here enlightening:

"Q. (By Mr. SULLIVAN). Now Mr. Foster, in his cross examination of you, has sought to indicate here that it might take a considerable length of time to build ships of the type that you might desire. In that interim, as in any interim, would it not be the policy of the company to charter temporarily as a makeshift?

"A. (By Mr. EMBLIDGE). Oh, yes.

"Q. When new ships must be built?

"A. Yes; that is correct.

"Q. At least, that is your hope?

"A. Yes, sir. We intend, just as soon as the war is over, to reestablish the service in some form, shape or manner, at the earliest possible date because we realize that we will have to get back into it very quickly."

(H) Additional Proof of Public Convenience and Necessity

The only real reference to anything that may be considered as proof, offered by the applicants either pro or con their contention of public need for their services is the following, abstracted from pages 479–480 of the record:

"Mr. FOSTER. We filed an application in this matter before we even got into the war, with respect to the sale of fourteen vessels (of the Great Lakes Transit Corporation) most of which apparently were lying at the dock doing nothing.

"Mr. EISEN. Because there was not enough business."

Extensive argument is here unnecessary. The Commission has already found, by Division 4, that these applications should be

denied and dismissed. Applicants requested a further hearing to submit proof of alleged changed conditions. If anything, the further hearing clearly and inexorably sustains the finding of the majority of Division 4 herein.

Upon all the facts of record and with full consideration of the law applying hereto the Commission should affirm the action of Division 4, which dismissed the instant applications.

Respectfully submitted.

JOSEPH M. ARNOLD,
210 Wayne Street, Detroit, Michigan

and

CHARLES E. LEWIS,
2828 Union Guardian Building, Detroit, Michigan,
For Detroit and Cleveland Navigation Company.

S. S. EISEN,
140 Cedar Street, New York 6, New York,
For Nicholson Universal Steamship Company.

AUGUST 4, 1943.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties to this proceeding by mailing a copy thereof to each party of record.

Dated at New York, N. Y., this 3rd day of August 1943.

S. S. EISEN.

35 *Exhibit E to Complaint*

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. W-592

Application of T. J. McCarthy Steamship Company for a Certificate to Operate as a Common Carrier in the Transportation of Property Between Ports on the Great Lakes

Docket No. W-729

Automotive Trades Steamship Company (Application to Operate as a Common Carrier by Water)

PETITION FOR REOPENING, RECONSIDERATION AND POSTPONEMENT OF THE EFFECTIVE DATE OF THE ORDER

Opening Statement

The decision of the Commission in the captioned proceeding, decided March 7, 1944, entirely misconstrues the facts and the law applicable, in such a manner as to jeopardize the stability of both past and future regulation of not only water carriers but motor carriers as well. It is of the greatest importance, therefore, that this proceeding be reopened, and certain glaring errors in the close decision (there are four dissenting votes) be corrected.

Because of the nature of the majority opinion, it is necessary to treat, in this brief, with certain fundamentals of carrier regulation and also to extensively quote from the Act.

(A) The statutory requirements for the issuance of a certificate of public convenience and necessity

Section 309 (c) of Part III of the Interstate Commerce Act states:

"Subject to section 310, upon application as provided in this section the Commission shall issue a certificate to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if the Commission finds that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied."

The language of Section 309 (c) is clear and unambiguous. It provides that a certificate shall be issued if the proposed service is or will be required by the present or future public convenience and necessity. No mysticism attaches to the word service. It connotes exactly what it is intended to mean and in Section 309 (c) it refers to transportation operations.

There is nothing in Section 309 (c) (the only section with which we are here concerned), that would permit the certification of a boat or vessel. The certificate issues only to the applicant, a common carrier as defined in Section 302 (d), when, as and if the applicant proves that it is fit, willing and able to provide the proposed service and secondly, that the proposed service is or will be required by the present or future public convenience and necessity.

The term public convenience and necessity has been dealt with by this Commission on many past occasions. It will suffice, in defining that term, to utilize the Commission's own terminology:

36 "An applicant is not required to show that there may be urgent need or necessity for his services before he may be granted a certificate. The words 'convenience' and 'necessity' are used conjunctively and are not synonymous, but must be given separate and distinct meanings. That 'necessity' must be somewhat liberally construed is supported by decisions of the Commission and the Supreme Court. The question is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need, and whether it will endanger or impair operations of existing carriers, contrary to the public interest." Pan-American Bus Lines Operation, 1 MCC 190, 202, 203; Minneapolis Van & Warehouse Company Common Carrier Application, 6 MCC 477, 480.

Justification for the use here of the Commission's verbiage under the Motor Carrier Act is set forth in subdivision (B) hereof.

Bearing in mind the requirements of Section 309 (c) as above, it is appropriate to view the findings of the Commission, in this proceeding, which precipitated its conclusions:

In discussing the testimony of witnesses offered in support of the applications the Commission sums up such testimony (sheet No. 4) in this language—"In substance, it is that applicants' vessels were essential to the transportation of automobiles from Detroit to Lake Erie Ports in the past, that it would not have been possible without them for the water carriers to have handled the automobiles offered for transportation in 1940 and 1941 and that they will again be needed when normal production of motor vehicles is resumed."

Again on sheet No. 4 it is stated—"In view of the large number of vessels which have been withdrawn from service on the Great Lakes since the original hearing, there is present need for the use of applicants' vessels from Detroit to Lake Erie Ports."

Again on the same sheet it is stated—"The witnesses, however, were of the opinion that applicants' vessels will be needed in the transportation of automobiles between the last mentioned Ports when the manufacture thereof is resumed."

On sheet No. 5 it is stated—"Thus, prior to the cessation of the manufacture of motor vehicles for civilian use, applicants' vessels were extensively utilized in the transportation of such vehicles."

On sheet No. 7 the following appears—"The record establishes that there was a definite need for applicants vessels in the trans-

portation of motor vehicles between Detroit and Lake Erie Ports prior to the cessation of the manufacture of motor vehicles for civilian use. It also shows with reasonable certainty that there will be a like need for them in that service at the termination of the war or when normal production and shipment by water of motor vehicles for civilian use are resumed."

Continuing on sheet No. 7 we find the following—"Witnesses representing manufacturers producing the bulk of the automobiles at Detroit testified * * * that in the absence of applicants' vessels it would not have been possible for the water carriers to have handled the automobiles offered for transportation in 1940 and 1941, and that with the resumption of automobile manufacture the use of applicants' facilities (undoubtedly referring to the three vessels owned by the applicants but operated by the Detroit & Cleveland Navigation Company) will be necessary in the handling of such traffic."

From the foregoing it is apparent that the Commission arrived at its conclusions that the certificate should be granted because there was need for the applicants' vessels in the transportation of motor vehicles in the past. Reference to Section 309 (c) indicates that a certificate will be issued if the proposed service is shown to be required "by the present or future public convenience and necessity." Nowhere therein is it stated that proof of past need will suffice. Reference to present and future need of course is irrevocably connected with need for transportation service. It is not sufficient proof, no less proof, satisfactory to the statutory requirements, to show need for any particular vessel.

We realize that the Commission, in innumerable proceedings has held that "operations over a considerable period of time in certain circumstances constitute some evidence that there is a need (present or future) for the service," but "the record must also show that the available facilities of the other (motor) carriers between the considered points are inefficient or inadequate to meet the needs of the interested shippers." North South Freightways, Inc. Extension—General Commodities, Docket No. MC–77365 (Sub. No. 4), decided March 24, 1944, mimeographed, citing McCoy Truck Lines, Inc., Ext. 26 M. C. C. 585.

37 Without exception, the rule adopted by the Commission of giving consideration to past operations as affecting present and future need has been confined wholly to instances where the past services were performed by a past recognized carrier who was also the applicant in the same proceeding. In this instance the past services were not performed by the appli-

cants but by the Detroit & Cleveland Navigation Company. How can it be said that the past services of the Detroit & Cleveland Navigation Company establish need for the proposed services of the applicants herein? Obviously so to hold would create an anomalous situation fraught with great danger and possessing potential power to undermine effective carrier regulation.

It is a fundamental precept of administrative law that the conclusions of the Commission must be supported by the evidence. There is not a word in the record or in the report and order of the Commission herein that justifies a finding that present or future public convenience and necessity require the issuance of a certificate to the applicants. We admit that predicated upon the fallacious syllogism projected herein by the Commission, the fallacy of which is established in subsequent sections hereof, and utilizing the erroneous premise that had these vessels of the applicants not been available in the past the existing common carriers would have made no effort to replace them and would not in fact have replaced them, the only conclusion that can be derived, which in and of itself must be fallacious because it is based on an erroneous premise, is that the use of the applicants' vessels in the past was essential and necessary in the public interest. Assuming that a finding of necessity for the past use of applicants' vessels can erroneously thus be made, does that in and of itself justify the issuance of a certificate particularly when it is evident that the certificate can bear no relationship to the facilities operated? If it does then the Commission has continuously erred in considering, in all past proceedings involving public convenience and necessity, the effect of the granting of the requested certificates on existing certificated carriers. In other words the statute does not provide that the boats are to be certificated—only the applicants are.

The statute does not demand proof that the specific boats be required at present or that they will be required in the future. The Act does, however, demand that there be unequivocal proof that the services proposed by the applicant are required at present or in the future. What showing is contained in the record of the need, present, or future, for applicants' services? That there is none is set forth in the subsequent sections hereof. It thus becomes apparent that the ultimate conclusions of the Commission, that present or future public convenience and necessity require the proposed services of the applicants, are made without supporting evidence.

The Commission's decisions cannot be sustained where the only reasonable deduction from the entire record and findings is that

the Commission has undertaken to support such findings, (a) by arbitrarily permitting only selected evidence to be considered, which selected evidence was so selected and considered because it, and it alone, would support the Commission's findings and (b) by arbitrarily and completely rejecting and refusing to consider all other evidence, solely because it conflicts with the desired Commission's findings. Interstate Commerce Commission v. Union Pacific Railroad Company, 222 U. S. 541, 547–548; Interstate Commerce Commission v. Louisville & Nashville Railroad Company, 227 U. S. 88, 91; The Chicago Junction Case, 264 U. S. 258, 263; Consolidated Edison Company et al. v. National Labor Relations Board, 305 U. S. 197, 229; National Labor Relations Board v. Columbian Enameling & Stamping Co., 306 U. S. 292, 299; N. L. R. B. v. Thompson Products Inc., 97 F. (2d) 13, 15 (C. C. A. 6th, 1938).

While it is a fact that the Commission's conclusions will not be disturbed if there is substantial evidence to support those conclusions, this does not mean that the courts are not concerned where, as in this instance, the Commission reached wrong conclusions, by attributing to evidence, through wrong reasoning, substantial probative value which by right reasoning such evidence entirely lacks. Interstate Commerce Commission v. Louisville & Nashville Railroad Company, 227 U. S. 88, 91; Western Paper Makers' Chemical Company v. United States, 271 U. S. 268, 270–271; Virginian Railway Company v. United States, 272 U. S. 658, 663, 665–666; Consolidated Edison Company et al v. National Labor Relations Board, 305 U. S. 197, 229.

It goes without saying that a finding without supporting evidence is beyond the power of the Commission. Interstate Commerce Commission v. Louisville & Nashville R. Co., 227 U. S. 88, 92; Interstate Commerce Commission v. Union Pacific R. R. Co., 222 U. S. 541.

Excluding from this record consideration of the controversial evidence and testimony which were directed wholly and solely toward showing that inasmuch as the vessels of the applicants were utilized by established carriers, in the past, for the
38 transportation of automobiles, there was thus a need for the use of those boats, particularly if they were not replaced by other boats, there is not a bit of evidence in the record that would justify a finding that there is present or future need for the proposed transportation services.

(B) Issuance of the certificate herein, predicated wholly upon a finding that there was a past need for applicants' vessels, both directly and indirectly does violence to previous findings of the Commission and the United States Supreme Court under comparable and similar circumstances and conditions.

The similarity of language incorporated in corresponding Sections of Parts II and III of the Act, pertinent herein, is striking. We here quote Section 203 (14) of Part II of the Act and Section 302 (d) of Part III of the Act:

Section 203 (14)—Part II	Section 302 (d)—Part III
"The term 'common carrier by motor vehicle' means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property of any class or classes thereof for compensation,	"The term 'common carrier by water' means any person which holds itself out to the general public to engage in the transportation by water in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation,
Whether over regular or irregular routes,	
except transportation by motor vehicle by an express company	except transportation by water by an express company
to the extent that such transportation has heretofore been	
subject to part I,	subject to part I,
to which extent such transportation shall continue to be considered to be	in the conduct of its express business, which shall be considered to be
and shall be regulated as transportation subject to part I."	and shall be regulated as transportation subject to part I."

We now quote from Sections 206 (a) and 207 (a) of Part II of the Act and Section 309 (a) and (c) of Part III of the Act:

Section 206 (a)—Part II	Section 309 (a)—Part III
"Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in	"Except as otherwise provided in this section and section 311, no common carrier by water shall engage in transportation subject to this part
Any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States	
unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations:	unless it holds a certificate of public convenience and necessity issued by the Commission:
Provided, however, That, subject to section 210, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made	Provided, however, That, subject to section 310, if any such carrier or a predecessor in interest was in bona fide operation as a common carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made
and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation and has so operated since that time, except in either instance as to interruptions of	and has so operated since that time, (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event as to interruptions of service over which the applicant or its

Section 206 (a)—Part III

service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect.

And if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate.

Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 207 (a) of this part and such cer-

Section 309 (a)—Part III

predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in subsection (b) of this section and prior to the expiration of one hundred and twenty days after this section takes effect.

Pending the determination of any such application, the continuance of such operation shall be lawful, if the application for such certificate is not made within one hundred and twenty days after this section takes effect, it shall be decided in accordance with the standards and procedure provided for in subsection (c), and such certificate shall be issued or denied accordingly.

Any person, not included within the provisions of the foregoing proviso, who is engaged in transportation as a common carrier by water when

tificate shall be issued or denied accordingly.	this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a certificate, and, if application for such certificate is made to the Commission within such period, the continuance of such operation shall be lawful pending determination of such application."
Pending the determination of any such application the continuance of such operation shall be lawful."	
Section 207 (a)—Part II	Section 309 (c)—Part III
"Subject to section 210.	"Subject to section 310."
a certificate shall be issued to any qualified applicant therefor, authorizing the whole	Upon application as provided in this section the Commission shall issue a certificate to any qualified applicant therefor, authorizing the whole
or any part of the operations covered by the application, if it is found that the applicant	or any part of the operations covered by the application, if the Commission finds that the applicant
is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied."	is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules and regulations of the Commission thereunder, and that the proposed service, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied."

40 The similarity of verbiage employed in Parts II and III is not merely accidental. Congress had the benefit of Part II of the Act when it wrote Part III. It not only had the ad-

vantage of the availability of the language of the Motor Carrier Act, then in effect, but also the Commission's and Court's interpretations of the pertinent portions thereof. That it chose to employ (in Part III the Act) not only like language but the exact language that was contained in Part II of the Act was and is inactive of a Congressional manifestation that similar interpretations be placed upon Part III of the Act as was theretofore accorded Part II of the Act.

We cannot impute to the Congress of the United States a lack of knowledge of the physical dissimilarities between motor vehicles and vessels. Congress cannot be accused of not knowing the disproportionate relationship of investments in individual motor carrier vehicles and maritime vessels. Neither can Congress be accused of lack of knowledge of the intrinsic attributes of motor truck transportation as compared or contrasted with water transportation. Nevertheless, notwithstanding all of these distinguishing features, Congress clearly indicated that the Water Carrier Act be accorded construction and application similar to that of the Motor Carrier Act. It did this by embodying in Part III of the Act the precise language theretofore contained in Part II.

It is erroneous for this Commission, or anyone else, to take the English language and apply two different interpretations to the same sentence or clause. In United States Navigation Co., Inc., vs. Cunard Steamship Co., Ltd., et al., 284 U. S. 474, the United States Supreme Court had before it the question of the interpretation to be accorded the Shipping Act, 1916, as amended by the Intercoastal Act, 1933. In dealing with the interpretation of the Shipping Act, 1916 which of course applied to regulation of water carriers possessing physical characteristics distinguishable from railroads operating overland, the Supreme Court said:

"The Shipping Act is a comprehensive measure bearing a relation to common carriers by water substantially the same as that borne by the Interstate Commerce Act to interstate common carriers by land. When the Shipping Act was passed, the Interstate Commerce Act had been in force in its original form or in amended forms for more than a generation. Its provisions had been applied to a great variety of situations, and had been judicially construed in a large number and variety of cases. The rule has become settled, that questions essentially of fact and those involving the exercise of administrative discretion, which were within the jurisdiction of the Interstate Commerce Commission, were primarily within its exclusive jurisdiction, and, with certain exceptions not applicable here, that a remedy must be sought from the Commission before the jurisdiction of the courts could be invoked. In this situation the Shipping Act was passed. In its general scope and

purpose, as well as in its terms, that Act closely parallels the Interstate Commerce Act; and we cannot escape the conclusion that Congress intended that the two acts, each in its own field, should have like interpretation, application and effect. It follows that the settled construction in respect to the earlier act must be applied to the later one, unless, in particular instances there is something peculiar in the question under consideration, or dissimilarity in the terms of the Act relating thereto, requiring a different conclusion. (Pages 480–481)."

"The provisions of the Shipping Act clearly exhibit the close parallelism between that Act and its prototype, the Interstate Commerce Act, and the applicability to both of like principles of construction and administration. (Page 484)."

If the Shipping Act of 1916 can be termed the prototype of the Interstate Commerce Act, particularly in view of their divergence in language, then what must be said relative to the language of Parts II and III of the Act especially that portion above quoted?

In considering the matter of statutory interpretation it is of extreme importance that cognizance be taken of the reason why the administrative body has exclusive jurisdiction of matters involving administrative discretion. As stated by the United States Supreme Court in Board v. Great Northern Ry. Co., 281 U. S. 412:

"Only through the action of such a body could there be secured the uniformity of ruling upon which appropriate protection from unreasonable exaction and unjust discriminations must depend."

Of similar purport see Mitchell Coal & Coke Co. v. Pennsylvania R. R. Co., 230 U. S. 247. It should be observed, from the above, that matters involving administrative discretion are non-justiciable by the Courts wholly because of the need for uniformity of construction interpretation and administration of the administrative laws. An anachronistic situation develops where the administrative body, itself creates the very discordance that was sought to be precluded, by according similar sections possessing precise language different and incongruous interpretations.

It must be concluded therefore that the interpretations, constructions and rulings, under the Motor Carrier Act, issued by this Commission and affirmed by the Courts must be given due and complete consideration in the administration of Part III of the Act.

While the Courts have held that they are not concerned with inconsistencies between the Commission's findings in a particular case and its findings in other proceedings, this is merely a recognition that the doctrine of stare decisis does not necessarily apply

to decisions of administrative bodies on administrative questions. However, it does not preclude the recognition that such inconsistencies may constitute cumulative evidence that the Commission's determination in the particular case was wholly arbitrary and capricious. Sprigg v. Baltimore & Ohio Railroad Company, 8 I. C. C. 443; The Commutation Rate Case, 21 I. C. C. 426; East Dubuque Supply Company v. Illinois Central Railroad Company, 28 I. C. C. 426, Commutation Fares to and from Washington, D. C. 35 I. C. C. 428; St. Louis-Missouri-Illinois Passenger Fares, 41 I. C. C. 584; Natchez Chamber of Commerce v. Louisiana & Arkansas Railway Company, 52 I. C. C. 105; Memphis-Southwestern Investigation, 55 I. C. C. 513; Natchez Chamber of Commerce v. Arkansas Harbor Terminal Railway Company, 58 I. C. C. 310; Interchangeable Mileage Ticket Investigation, 71 I. C. C. 200; Armour & Company v. Central of Georgia Railway Company, 81 I. C. C. 33; York Valley Lime & Stone Company, Inc. v. Pennsylvania Railroad Company, 186 I. C. C. 763; Passenger Fares and Surcharges, 214 I. C. C. 174.

The United States Supreme Court in United States et al. v. Rosenbloom Truck Lines, Inc., 315 U. S. 50, dealt with a situation comparable with that herein. In that proceeding the recognized common carrier augmented its fleet through the use of leased units. The lessors or owners of the vehicles which were utilized, operated and controlled by the established common carrier sought "grandfather" rights. Neither the Commission nor the United States Supreme Court dealt with the speculative proposition of whether (1) there was need for the leased units to move the tonnage that they actually moved; (It appears rather apparent that if the units were used to move the particular tonnage, they were needed to move that tonnage.) (2) no endeavor was made to speculate as to how the tonnage would have moved if the leased units were not available, and (3) no consideration was given to the investments of the owners in the leased units and the effect that the denial of the common carrier rights sought would have upon such investments. The Court, in affirming the denial of the certificate, said:

"We think it clear that Congress did not intend to grant multiple 'grandfather' rights on the basis of a single transportation service * * * the result would be to create in this case two services offering transportation to the public when there had been only one on the 'grandfather' date."

It may be urged that this is not a "grandfather" case and therefore should be distinguished from the Rosenbloom case. Such contention is wholly preposterous. What the Commission is here doing is creating, by indirection, two operations where only one previously existed. By finding that there was need for the vessels

to move the particular tonnage that they did, the Commission in effect, without treating with the question of present or future public convenience or necessity, creates two operations where only one previously existed. To try to differentiate the instant case and the Rosenbloom case because the latter was on the "grandfather" theory and, the instant case is on an extension theory is in effect to try to distinguish between tweedle-dee and tweedle-dum.

On sheet 7 of the proposed report it is said—"Refusal of applicants' right to initiate such operations with their own vessels might seriously impair their investment in those vessels and while that fact is not controlling, the refusal would according to this record deprive shippers of necessary transportation facilities which would not be in the public interest." Why were not the investments and the potential impairment thereof of the owner-operators under the Motor Carrier Act given consideration by this Commission if consideration of investments is to be a factor under Part III of the Act? Is it the amount of the investment, rather than the principle that is to govern? If so what is the line of demarcation? The public is entitled to know the amount of investment necessary before such consideration and protection will be accorded.

42 The cornerstone around which revolves the administration of the Motor Carrier Act was and is the principle enunciated in C. & D. Oil Co. Contract Carrier Application, 1 MCC 329, 332 as follows:

"We think that, in order to foster sound economic conditions in the motor-carrier industry, existing motor carriers should normally be accorded the right to transport all traffic which they can handle adequately, efficiently, and economically in the territories served by them, as against any person now seeking to enter the field of motor-carrier transportation in circumstances such as are here disclosed."

If the determination, indicated in the C. & D. Oil Co. Case, above quoted, is a necessary condition prerequisite to the issuance of a certificate of public convenience and necessity under the Motor Carrier Act, why should not the same rule of law apply to the same language incorporated in Part III of the Act? Nowhere in this record is there any evidence to support the conclusion that existing lines would not be prejudiced and materially hurt, financially and otherwise, by the encroachment upon their field, presently adequately served, by additional carriers. Additional carriers, particularly where there is no need therefor, place an added burden upon the transportation plan and as the Commission has heretofore found, are contrary to the public interest.

(C) There is no justification for assuming, as the Commission has, that if applicants' vessel had not been available to the established water lines in the past, others would not have been available for use

The applicants purchased their three vessels for the purpose of chartering them to the established common carriers. The applicants never desired to assume the obligations of common carriers. They chose to secure such benefits as were available to them through ownership rather than operation of the vessels and thereby free themselves of common carrier liabilities. They not only purchased the three vessels herein involved for that purpose but they entered into an arrangement with the Detroit & Cleveland Navigation Company, which irrevocably tied up the charter party with a solicitation agreement. Under the terms of the charter and solicitation agreements the Detroit & Cleveland Navigation Company was bound to use the vessels of the applicants rather than purchase its own boats or charter boats from other companies (R. p. 137). This is a clear indication that at the time the Detroit & Cleveland Navigation Company entered into the charter agreement with the applicants, there were other boats available to it.

The record does not indicate whether the charter or the solicitation agreement was the more desirable to the Detroit & Cleveland Navigation Company but consideration should be paid to the fact that they were closely and integrally entwined.

The record therefore conclusively establishes, and the record is the only basis upon which the Commission can predicate its conclusions or even assumptions, that in the past there were ample steamship facilities available to the established water lines. The record further establishes that insofar as the Detroit & Cleveland Navigation Company was concerned, it did not supply vessels in lieu of those of the applicants because it was precluded from doing so by contractual relations with the applicants.

Insofar as the Nicholson Universal Steamship Company was concerned, it did not provide facilities over and above the vessels it operated on the Great Lakes because there was no need for additional steamers. The Nicholson Universal Steamship Company's facilities were not utilized to anywhere near their maximum capacity. Exhibit No. 4 in Docket No. W-732, incorporated into this record by stipulation (R. pp. 321-325), clearly indicates that in 1940, for example, had sufficient automobile tonnage been offered, Nicholson Universal Steamship Company alone could have carried an additional 87,342 automobiles to Buffalo, New York, or an additional 174,685 automobiles to Cleveland, Ohio. The

Commission's report stresses the fact that in 1940 the applicants' vessels, operated by the Detroit & Cleveland Navigation Company, carried 77,741 automobiles or substantially less than the unused, available facilities of the Nicholson Universal Steamship Company.

It is unnecessary here to again reiterate the mass of factual data in this record which conclusively establishes the unused available carrying capacity of the Nicholson Universal Steamship Company during 1940 and 1941. The Commission is respectfully requested to review that matter, as set forth in detail on pages 11 to 14 inclusive of protestants' brief of March 21, 1942, and pages 13 and 14 of protestants' exceptions of June 29, 1942. Reference to those pages and the supporting underlying data of record, referred to therein, will conclusively establish that in the past Nicholson Universal Steamship Company was forced to curtail its automobile-carrying facilities because of the over abundance of vessel carrying facilities and the shortage of automobile tonnage, as compared therewith. Any conclusion made in this proceeding finding past need for the use of the applicants' vessels in the automobile trade, results from a complete disregard of the facts of record herein.

43

(D) Peak Periods Are not Proper Criteria for the Issuance of Certificates of Public Convenience and Necessity

On sheet No. 5 of its report the Commission states:

"Prior to the war, the peak period for the movement of automobiles on the Great Lakes commenced in September or early October, with the production of new models. In 1940 and 1941, there were delays ranging from 2 to 4 days in the loading of the automobiles from the docks at Detroit incident to the congestion of such traffic and the inability of the water carriers to handle it promptly, which caused delays in delivery at final destination and resulted in numerous complaints from automobile dealers and distributors. Because of such delays, it was necessary at times to move by motortruck automobiles which had been previously delivered to the docks at Detroit for water transportation."

This is the only statement in the report directed toward the question of the proof of public convenience and necessity for the proposed operations. However, with respect to peak periods the Commission has already held in Cater's Motor Freight System, Incorporated, Extension of Operation.—Wenatchee, 10 MCC 292, 294:

"While we recognize the desirability of motor carriers making every effort to supply for the public a sufficient amount of equip-

meet to take care of every reasonable demand, we must also acknowledge that large financial investments are required if there is to be sufficient equipment to take care of the maximum demand that can arise under the circumstances of peak movements. On the other hand, if we were to authorize this applicant to enter the field, it would create no new business but would serve only to further divide the existing business during the entire period of movement. Public convenience and necessity refer to a demand that is reasonably constant and determinable rather than to the extraordinary peaks that may rise in the course of any business. The testimony shows that these peak periods are not reached more often than one or two days per month during a shipping season, and to a considerable extent such shortages can be averted if the shipper gives 24 to 48 hours' notice of the need for equipment. Our problems, therefore, becomes one of deciding between a group of carriers who are now adequately equipped to provide all of the service which is normally needed and an applicant which seeks, properly enough, to strengthen its own financial position by procuring additional tonnage. The demand occurs so irregularly that we cannot say that it is required by public convenience and necessity."

Many, if not the greatest number, of the complaints of delay during the peak periods were precipitated by faulty truck operations rather than water carrier activities (R. pp. 279-280, 298-299, 309). The difficulty appeared to be lack of synchronization in boat-truck operations at Buffalo, New York, in that the motor carriers did not have sufficient equipment to take care of all of the automobiles brought in, in boatloads. This resulted in accumulations at Buffalo. After the accumulations were disposed of, the Buffalo truckers were idle pending the arrival of the next boatloads (R. pp. 279-280, 309). The record does not indicate how additional boats rather than additional trucks could cure this situation.

(E) The Commission's Conclusions in this Case do Violence to Conclusions Heretofore Made Under Part III of the Act

Not only is the Commission's decision herein inconsistent with and repugnant to the law evolved under the Motor Carrier Act, as set forth hereinbefore, but it also is inconsistent with decisions of the Commission made under the Water Carrier Act.

In McLain Marine Corporation, Common Carrier Application, 250 I. C. C. 297 the applicant was granted a certificate even though it owned no floating equipment. It operated by virtue of chartered or leased facilities. To that extent its operations were

comparable with the operations of the Detroit & Cleveland Navigation Company insofar as they operated the vessels of the applicants herein. The Commission, however, made no determination in the McLain Marine Corporation case to ascertain the investment of the owners of the vessels so utilized by McLain. The Commission made no determination of the effect of such investments, of the grand operating rights to McLain without corresponding certification of the boat owners. Why is the situation in that case different from that herein?

Similarly, in Federal Materials Company, Inc., Contract Carrier Application, 250 I. C. C. 149, the applicant, an owner of vessels with a substantial investment therein and with a desire to operate subject to regulation of this Commission was denied operating rights because it did not conform with all the prerequisites of the Act. Why did not that applicant receive consideration comparable with the applicants herein?

In McCarren Towing Line, Inc., Contract Carrier Application, 250 I. C. C. 168, the applicant was denied operating rights even though it owned vessels because it did not conform with the requirements of the Act.

The applicant in Owens-Parks Lumber Co. Contract Carrier Application, 250 I. C. C. 206, was likewise denied operating rights even though it had substantial investments in vessels that would be impaired if operating rights were not issued to it.

In River Sand & Gravel Co., Contract Carrier Application, 250 I. C. C. 370, the application was dismissed without any consideration by the Commission comparable with that granted to the applicants herein.

In Bronx Towing Line, Inc., Contract Carrier Application, 250 I. C. C. 614, the applicant was denied a certificate and/or a permit, even though it had engaged in the chartering of its tugboats to other carriers. In denying operating rights the Commission said: "In such chartering of vessels, applicant is not engaged in transportation as a common or contract carrier as defined in Section 302 (d) and (e) of the act, and it need not obtain a certificate or permit to continue such operation. It has not chartered floating equipment to shippers. Under these circumstances applicant has not engaged in any transportation subject to Part III of the act in the chartering of vessels, and is not entitled to authority under Section 309 (f) to charter its vessels to others."

The applicant in the proceeding above occupied a position not a bit different from the applicants herein. The applicants herein need no authority to continue chartering their vessels to other carriers.

In National Barge Co. Contract Carrier Applications, 250 I. C. C. 806, in dismissing the applications because the carrier had theretofore engaged in the chartering of its vessels to other carriers, the Commission said:

"If there is need for applicant's vessels they are available, as in the past, for charter by the carriers who provide the whole transportation service."

In all of the above cases wherein operating rights were denied, the Commission conformed with the requirements of the Water Carrier Act in a manner consistent with its previous determinations under Part II of the Act. It did not consider extraneous and immaterial matters as it is doing here. It found, for example, in the National Barge Company Case, supra, that ownership of a vessel is not sufficient per se to permit the issuance of a certificate of public convenience and necessity. The Commission disregarded; and properly so, conjecture relative to investments of the ship owners in the vessels and the potential impairment thereof by the nonissuance of the certificate sought. Where the applicants, who were denied operating rights, performed charter services to carrier, in the past, the Commission held, and properly so, that such applicants could continue the activities in which they theretofore engaged, namely, ship, lease or charter to other carriers, without authorization from the Commission.

The applicant in this proceeding should be treated the same as have been all other applicants before the Commission under Parts II and III of the Act.

(F) The Commission misconstrues or disregards pertinent facts in its report and order

On sheet No. 4 of the proposed report it is stated:

"As the result of inquiries received by applicants at the time of the further hearing from a representative of the Army and from a common carrier of automobiles by motortruck, applicants expected to continue to transport motor vehicles from and to the same ports during 1943. Applicants state that they are prepared to transport motor vehicles not only from Detroit to Buffalo, but also from Detroit to the head of the lakes."

45 Again on sheet No. 6 it is said:

"This protestant (Detroit & Cleveland Navigation Company) has in the past transported automobiles on its combination passenger and freight vessels, and at the further hearing expressed the opinion that it would be able adequately to provide for the needs of the Army in the transportation of motor vehicles between Detroit and Lake Erie ports during 1943. The evidence shows,

however, that generally during the summer tourist season, extending from June to September, this protestant transports many passengers and their automobiles on its vessels, and in many instances there is little, or no, space available for other motor vehicles."

In its findings as above the Commission entirely disregarded or overlooked the pertinent facts of record with respect to this situation which we here reproduce from pages 10 and 11 of our brief on further hearing of August 4, 1943:

"The applicants were requested, by the Army, during 1942, to transport military vehicles from the port of Detroit, Michigan, to the port of Buffalo, New York. Those were the only ports that the applicants were able to carry automobiles from and to. Throughout the entire season the applicants handled twelve loads of automobiles to the port of Buffalo, New York, aggregating 950 vehicles (R. pp. 383–384).

"The applicants were requested, by the Army, to supply service for the transportation of military vehicles from Detroit, Michigan, to Buffalo, New York, wholly because of unavoidable contingencies which disrupted the automobile transportation service of the Detroit and Cleveland Navigation Company. In 1942 the Navy requisitioned the Steamer Greater Buffalo, owned by the Detroit and Cleveland Navigation Company, for conversion into an aircraft carrier. Prior to this action the Detroit and Cleveland Navigation Company maintained a nightly service between Detroit, Michigan, and Buffalo, New York (R. p. 516). The loss of the Steamer Greater Buffalo necessitated a revision of the existing schedule, reducing boat sailings from nightly service to three sailings per week. This action, of course, automatically and drastically curtailed the automobile carrying capacity of the Detroit and Cleveland Navigation Company between Detroit, Michigan, and Buffalo, New York (R. p. 517). This resulted in need for additional carrier facilities.

"For the 1943 navigation season the Detroit and Cleveland Navigation Company made arrangements for the operation of two vessels in the Detroit-Buffalo service and again is operating a nightly sailing. The Detroit and Cleveland Navigation Company has a present average carrying capacity per evening or per boat of 125 jeeps or 75 ambulances or 50 two and one-half ton trucks (R. p. 518). The Detroit and Cleveland Navigation Company is presently scheduled to move 600 two and one-half ton trucks and 225 jeeps for the account of the Army with the understanding that this number will be greatly augmented as the season progresses. The present facilities of the Detroit and Cleveland Navigation Company are adequate to wholly take care of the automotive transportation needs of the Army between Detroit, Michigan, and Lake Erie ports" (R. p. 519).

In view of this clear cut evidence of record it is improper for the Commission to give thought to conjecture relative to what might or might not have been or would happen under certain preconceived conditions. The actual happenings are in the record.

(G) The Case of Arco Auto Carriers Inc. Extension-Kenosha-Racine, Wis., Referred to on Sheet No. 8 of the Report, Is not Applicable Here

The proceeding here in issue involves the efforts of new carriers who never engaged in transportation service in the past to secure certificates of public convenience and necessity. Such carriers, the applicants, merely engaged in leasing or chartering their vessels to other carriers. They never performed carrier service for the shipping public.

Contrasted with the situation of the applicants, the Arco Auto Carriers Case, referred to on sheet No. 8 of the Commission's order, involved an applicant seeking operating authority which, "duplicates in certain respects the authority already held by applicant" (Sheet No. 2). In other words, the applicant in the Arco Auto Carriers Case was a common carrier already possessing a certificate. It was merely seeking an extension of operating rights. Not only were the rights it was here seeking duplicated by its existing rights but, furthermore, as the Commission found therein

46 "The proposed service is incidental to applicant's principal operations by the driveaway method, in initial movements."

Certain of the authority the applicant sought was to transport, by the driveaway method, between the particular points for which applicant possessed truckaway authority. Other of the rights sought would permit the applicant to return rejected shipments and move back, to the plant, vehicles requiring repairs.

In the Arco Auto Carriers Case, the shipper testimony clearly established the need for the continuance of the applicant's service and the extension of the service the applicant was seeking. No testimony nor evidence purported to show need for any particular transportation vehicle. The Commission made no determination, nor was it interested in whether the applicant owned its equipment or leased it; whether the applicant had any investments in equipment or whether the investments would be impaired by the denial of the operating rights. As the Commission reported (Sheet No. 6):

"The need (for the applicant's service) expressed by this shipper for additional service is based upon the demand existing during

normal times and not upon the demand as affected by the national emergency."

Another shipper testified (Sheet No. 7):

"There is a need for the additional service which applicant proposed to render between the above-named points."

The Commission (also on Sheet No. 7), found:

"The authority sought for the operations * * * is requested so as to permit applicant to render shippers it is now serving a complete service in connection with the operations authorized by the certificate already granted."

"It also would permit applicant to continue operations which it has conducted over a period of years * * * no opposition is made to this particular part of applicant's proposed operations * * * the record is not convincing that a grant to applicant of authority to operate between Chicago and points in Missouri will affect adversely the operations of this (protesting) carrier."

Not only is there no comparison between the situation of the applicant in the Arco Auto Carriers Case, and the applicants herein in the factors set forth above, nor is there any comparable matter contained in the records of the respective cases. The applicant in the Arco Auto Carriers Case sought to round out its operations, sought to be in a position to render the shippers a more complete service and finally sought to continue operations which it was conducting as a common carrier. It did not seek permission to continue to use its trucks because they had been used in the past. It established that the services proposed, rather than the vehicles utilized, were necessary in the public interest.

In the Arco Auto Carriers Case, emphasis was placed upon the fact that the situations portrayed in the record depicting need for the proposed service were situations that existed before the present emergency and that would exist after the present emergency. The Commission's conclusions in the Arco Auto Carriers Case, as quoted on sheet 8 of the report and order herein, that:

"While the curtailment in the production of automobiles during the national emergency results in a temporary diminution in the demand for the transportation of such commodities, it has not been our policy to deny an application because of the changed conditions resulting from the war, if the evidence otherwise supports a grant thereof. Normal conditions including the demand heretofore experienced are bound to recur and applicant should not then be expected to incur the cost and delay of a further proceeding"

directly preclude a grant of operating authority here. In the instant case the Commission predicates its conclusions upon speculation, conjecture and abnormal wartime conditions. It is wholly

and solely on the basis of the abnormal wartime shipping conditions that the Commission would find present need for the applicants' services. It is wholly upon conjecture as to when protestants will be in a position to restore their prewar shipping fleet that the Commission finds the existence of future public convenience and necessity. How can the Commission's action in this case be made comparable with its statement of normal conditions, in the Arco Auto Carriers Case above quoted? Obviously the citation in the Arco Auto Carriers Case cannot, by any stretch of the imagination, be used to justify the action of the Commission herein. If anything it precludes it.

47 (H) The Commission's prognostications relative to the postwar situation are wholly conjectural, unsupported by the record and contrary to the evidence

On Sheet No. 7 of the report and order herein it is stated:

"Although the expectation of protestants is that considerable tonnage will be available at the termination of the war, there is admittedly much uncertainty as to the length of time that may be required to procure and place in operation on the Great Lakes additional vessels adapted to their needs. Replacement by protestant D. & C. Company of its combination passenger and freight vessels alone will not adequately meet the needs of this service when conditions become normal, for the reason that during a substantial part of the navigation season such vessels were used in the past, and doubtless will again be used, for the transportation of passengers and their automobiles, leaving them with little or no carrying capacity for other motor vehicles. So far as appears, this also was and will be true of the combination passenger and freight vessels operated by protestant Great Lakes Transit Corporation. At certain times during the period prior to 1942, there were insufficient vessels, including applicants' vessels, fully to meet the needs of shippers of motor vehicles and similar situations may likely arise at such times in the future after the war upon resumption of normal production of motor vehicles. As has been stated, applicants own three vessels which can be reconverted into motor vehicle carriers without much difficulty. The necessary materials and equipment for that purpose have been retained. It is their intention to so reconvert upon termination of the present emergency. Unquestionably the public interest will be adversely affected if, after the production of automobiles is resumed, protestants are delayed in acquiring the additional facilities which they indicate will be necessary to meet the increased demands for transportation."

It is to be noted that nowhere in the Commission's discussions of the postwar fleets of the protestants is mention made of the vessels of the Nicholson Universal Steamship Company. On Sheet No. 5, the Commission found that Nicholson Universal Steamship Company, at the time of the further hearing, operated nine vessels, title to four of them vested in Nicholson Universal Steamship Company and title to the remaining five was in the Government. Negotiations had already been instituted by the carrier to reacquire the five vessels at the termination of the war. The importance of the operations of the Nicholson Universal Steamship Company in the determination of the matter above quoted is of extreme importance, particularly when it is borne in mind that of the total number of automobiles shipped from and through the Port of Detroit, Michigan, in 1940, the Nicholson Universal Steamship Company, alone, carried fifty-two (52) per cent thereof (Exhibits Numbers 1, 2 and 3 in Docket No. W-732, incorporated herein by reference).

In the last sentence of the matter quoted above from sheet No. 7, the Commission refers to some delay in protestant's ability to meet the increased demands for transportation. In all fairness the Commission should likewise prognosticate (but it would have to also do so upon a record barren of supporting evidence), when automobile production will get under way and when that production will reach the stage where water transportation will be used in a quantity sufficient to utilize all of the vessel space available. This also requires a finding as to the quantity of automobile vessel space that will be available after the war. If protestants are to be delayed in acquiring water facilities, how long will they be so delayed?

If the war ends and automobile transportation reaches proportions that would require additional vessels, for example, in November, there would be no need to issue temporary authority, assuming that temporary authority was necessary, until the opening of the Lakes the following April or May. Then temporary authority could be granted for six months from the date of the opening of the Lakes. In other words, from a practical viewpoint under such contingency, the temporary authority would actually run for a period of five months of closed navigation and six months of open navigation or a total of eleven months. Is it the Commission's finding that the protestants will be unable to supply shipping facilities within that eleven-month period? If automobile production gets under way in a manner and under conditions that will require the bulk of the movement to occur via rail and sufficient tonnage is not offered to utilize the facilities of the existing boat lines, will the Commission revoke the authority it here seeks to grant to the applicants?

The above shows the controversial, conjectural nature of the determinative feature herein involved—will there be a need for additional carriers after the war? Such speculation as is engaged in by the Commission in this proceeding, certainly
48 is not the basis for the award of operating rights. The language of the dissenting minority succinctly states the errors of the majority opinion. It is worthy of repetition here:

"I dissent from this report to the extent that it finds that the future public convenience and necessity require the operation proposed by applicants. In my opinion there is no evidentiary support in the record for such a finding. The findings in the prior report of division 4, 250 I. C. C. 550, should be affirmed in all respects.

"The fact that applicants' vessels were used as they were to carry automobiles prior to the present emergency and may be needed for that service when the production of automobiles is resumed does not warrant the conclusion that there will be need for the operation of such vessels by applicants as a new carrier in the field. That will not increase the amount of service formerly provided. Those vessels may be operated as formerly by existing authorized carriers under charter. Adequate service has been provided by protestants in the past and there is nothing in the record to show that they will be unable to provide similar service in the future.

"All of the conditions set forth in the record are abnormal, due largely, of course, to the war. Most of the vessels, including those of applicants, formerly used in the transportation of automobiles on the Great Lakes have been converted for, and are being used in, the transportation of other commodities in connection with the war effort. It is indefinite as to how long present conditions will continue or whether applicants will be able to exercise the authority herein granted upon expiration of their existing temporary authority. In my opinion the decision of the majority is based upon too many assumptions and suppositions to be sound as a matter of law.

"After the war there undoubtedly will be a period of readjustment of the operations of many water carriers and the resumption of suspended operations in many instances will no doubt be delayed. In this or similar cases, if an immediate and urgent need for service exists, temporary authority to provide such service may be granted under the provisions of section 311 (a). However, any consideration which we may now give to the conditions above referred to does not afford a sound basis for the granting of certificates under section 309 (c) permanently authorizing the institution of new operations."

CONCLUSION

There really is no purpose in engaging in extensive argument herein. The issues are well defined. The Act is clear. The Commission's duties are apparent.

In closing, however, we do desire to direct attention to the principal factor which distinguishes this case from the "run of the mine" application cases.

The shipper testimony and evidence adduced by the applicants were not directed toward having additional service instituted nor for having additional carriers enter the field of transportation because of need therefor but rather for continuance in operation of certain specified transportation facilities, heretofore used and which existing carriers offer to supply immediately, or in the future, as need should arise. The Commission made no finding herein, because the record does not permit it, that (a) the service rendered by the existing carriers was inadequate nor (b) that there is need for an additional carrier, nor (c) that the instrusion into the field of an additional carrier will have no adverse effect upon existing carriers. The Commission here seeks to grant operating certificates merely upon a showing that certain leased vessels were utilized in the trade and that therefore there was need for those specific vessels in the past and accordingly there will be need for those specific vessels in the future. No other vessels, apparently, whether they be larger, faster or more adaptable to the trade, under the Commission's reasoning, would have sufficed or will in future suffice.

The Commission does not, however, here seek to certificate the precise boats which it finds were essential but rather an operating company which it has not found, because the evidence will not support such a finding, to be necessary in the public interest. It should not be overlooked that if the operating company is certificated, the precise vessels, the past alleged necessity for which precipitated the Commission's findings herein, may not be made available in the future. The certificate imposes no such requirement. There is no assurance that vessels, if any, the applicants will provide in futuro. On the other hand, the applicants, after the war, when boat tonnage conceivably will be plentiful and cheap, may supply so much as to put all established water lines, that have diligently served the public interest for the last decade, out of business.

49

Wherefore the Commission is respectfully requested to postpone the effective date of the certificate and order herein, to reopen

and reconsider this proceeding upon the record as made and after sound and due consideration to dismiss the applications.

Respectfully submitted.

NICHOLSON UNIVERSAL STEAMSHIP COMPANY,
By S. S. EISEN,
140 Cedar Street, New York 6, N. Y., For Protestant.

APRIL 19, 1944.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties to this proceeding by mailing a copy thereof to each party of record.

Dated at New York, New York, this 18th day of April, 1944.

S. S. EISEN, *For Protestant.*

50 *Exhibit F to complaint*

INTERSTATE COMMERCE COMMISSION

OFFICE OF CHIEF EXAMINER, WASHINGTON 25

No. W-592

T. J. MCCARTHY STEAMSHIP COMPANY, COMMON CARRIER APPLICATION

No. W-729

AUTOMOTIVE TRADES STEAMSHIP COMPANY, COMMON CARRIER APPLICATION

MR. WILLIAM F. PRICE,
Pope & Ballard,
120 South LaSalle Street, Chicago 3, Ill.

DEAR SIR: On June 10, 1944, you forwarded to the Commission copies of a petition for leave to file the petition of Detroit and Cleveland Navigation Company and Great Lakes Transit Corporation for reopening, reconsideration and postponement of the effective date of the order in the above proceedings.

From the enclosed copy of the Commission's order you will note that the Commission, on June 5, 1944, denied the petition of protestant Nicholson Universal Steamship Company for reconsideration of these proceedings. In view of the action by the Commission it will be assumed, in the absence of advice to the contrary on or before June 26, 1944, that the petition for leave to file the peti-

tion of the Detroit and Cleveland Navigation Company and Great Lakes Transit Corporation is withdrawn.

Very truly yours,

ULYSSES BUTLER,
Chief Examiner.

Encl.

51 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Answer of the Interstate Commerce Commission

Filed July 22, 1944

Now comes the Interstate Commerce Commission, one of the defendants above-named, by its counsel, and in answer to the averments of the complaint respectfully represents:

1. The averments of divisions I, II, III, and IV of the complaint are admitted.

2. As to division V of the complaint, the procedural facts as therein averred are admitted and in further answer to the other averments therein contained, insofar as they may be deemed material, reference is made to the report of Division 4 of the Commission dated November 25, 1942, and attached to said complaint as Exhibit B thereof.

3. As to division VI of the complaint, the procedural facts as therein averred are admitted and in answer to the other averments therein contained, insofar as they may be deemed material, reference is made to the report of the Commission of
52 March 7, 1944, attached to the complaint as Exhibit A thereof.

4. As to divisions VII and VIII of the complaint, it is submitted that the matters therein set forth are purely argumentative but that if answer be required reference is made to said report and order of the Commission of March 7, 1944.

5. The averments of the first paragraph of division IX of the complaint are denied.

The averment that the ultimate conclusions of the Commission as shown in its report of March 7, 1944, are unsound in law, contrary to the record, arbitrary, and capricious, are denied.

The other averments contained in division IX are purely argumentative.

6. The averments of division 10 of the complaint are admitted except that it is averred that said petitions of Detroit and Cleve-

laid Navigation Company and Great Lakes Transit Corporation, referred to therein, have now been denied by the Commission.

7. The averments of division 11 of the complaint are denied.

8. In further answer to the complaint, it is averred that in the proceedings under the applications referred to in the complaint, the plaintiffs as well as other parties of record were accorded a full hearing as provided by the Interstate Commerce Act; that in said hearings a large amount of testimony and other evidence bearing upon the issues involved was submitted to the Commission for consideration; that in said proceeding questions relating to said issues were submitted to the Commission for determination, including questions raised by the plaintiff in this cause, whereupon the Commission determined said issues and entered and served upon the parties to the said proceedings its report and order complained of herein; that said report and order contains the Commission's findings of fact and conclusions thereon upon the evidence aforesaid. The Commission further alleges
53 that each and all the findings and conclusions in said report were supported by the evidence.

The Commission further alleges that in making said report of March 7, 1944, it considered and weighed carefully in the light of its own knowledge and experience all of the facts and conditions called to its attention on behalf of the parties to the proceedings, including questions and matters covered by the allegations of the complaint herein.

The Commission further alleges that said report and order of March 7, 1944, was not made or entered either arbitrarily or capriciously or contrary to the relevant evidence or without evidence to support them; that in making said orders the Commission did not exceed the authority duly conferred upon it, and the Commission denies each and all the allegations to the contrary contained in said complaint.

Except as herein expressly admitted the Commission denies the truth of each and all the allegations contained in the complaint insofar as they conflict with the allegations herein or with the statements or conclusions contained in said report and order of March 7, 1944.

Wherefore, The Commission prays that the complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
DANIEL H. KUNKEL,
By Daniel H. Kunkel, *Attorney.*

DANIEL W. KNOWLTON,
Daniel W. Knowlton,
Chief Counsel,
Of Counsel.

634722—45——6

54 CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above answer of the Interstate Commerce Commission upon each of the following counsel this 20th day of July 1944, by mailing them a copy thereof: Angell, Turner, Dyer & Meek, 2104 Dime Building, Detroit 26, Michigan; Pope & Ballard, 120 South LaSalle Street, Chicago 3, Illinois; S. S. Eisen, Esq., 140 Cedar Street, New York, N. Y.; Robert L. Pierce, Esq., Special Assistant to the Attorney General, Department of Justice, Washington 25, D. C.; Foster, Yost & Lott, Penobscot Building, Detroit 26, Michigan.

DANIEL H. KUNKEL.
Daniel H. Kunkel.

55 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Answer of the United States

Filed July 24, 1944

Now comes the United States of America, defendant herein, and in answer to the complaint says:

1. Admits the allegations of paragraph I and of parts II, III, and IV of the complaint.

2. Admits the allegations of part V of the complaint, but for a more complete statement concerning the matters referred to therein refers the Court to the decision of Division 4 of the Commission attached to the complaint as Exhibit B.

3. In answer to part VI of the complaint admits the procedural facts therein averred. Admits that the Commission's report contains the language quoted in said part, but for a more complete statement concerning the matters referred to therein the
56 Court is referred to the report of the full Commission attached as Exhibit A to the complaint. For further answer admits that there was conflicting testimony as to whether there was need for applicants' operations between Detroit and Lake Superior ports but alleges that it is the function of the Commission and not of the courts to weigh such conflicting testimony and that there is substantial evidence to support the Commission's finding that there was public need for such service.

4. In answer to parts VII, VIII, and IX of the complaint admits that the Commission's conclusion is primarily based upon the facts set forth in part VII as well as others. The Court is

referred in this connection to the Commission's report (Exhibit B to the complaint) for a more complete statement of the reasons for its decision. For further answer denies that the findings made by the Commission in its report do not support its ultimate conclusion that the future public convenience and necessity requires the issuance of this certificate or that such conclusion is not supported by the evidence, is unlawful, contrary to the record, or arbitrary and capricious.

5. Admits the allegations of part X of the complaint except alleges that said petitions of Detroit and Cleveland Navigation Company and Great Lakes Transit Corporation referred to therein have now been denied by the Commission.

6. Denies the allegations of part XI of the complaint.

Wherefore, it is respectfully prayed that the complaint be dismissed.

ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General, Department of Justice, Washington, D. C., Attorney for the United States of America, defendant.

WENDELL BERGE,
Assistant Attorney General.

JOHN C. LEHR,
United States Attorney.

57 CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the attached answer upon each of the following counsel this 22nd day of July, 1944, by mailing them a copy thereof: Thomas R. Lott, Esquire, Foster, Yost & Lott, Penobscot Building, Detroit 26, Michigan; Daniel H. Kunkel, Esquire, Interstate Commerce Commission, Washington 25, D. C.; Angell, Turner, Dyer & Meek, 2104 Dime Building, Detroit 26, Michigan; Pope & Ballard, 120 South LaSalle Street, Chicago 3, Illinois; S. S. Eisen, Esquire, 140 Cedar Street, New York, N. Y.

ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General.

58 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Petition for leave to intervene

Filed July 26, 1944

To the Honorable the Judges of the District Court of the United States for the Eastern District of Michigan, Southern Division:

Comes now the T. J. McCarthy Steamship Company, a Michigan corporation, and the Automotive Trades Steamship Company, a Delaware corporation, and files this, their Petition for Leave to Intervene, in the within cause.

Interveners show:

1. That on or about July 3, 1944, plaintiffs filed their Complaint in the within cause, naming the United States of America and the Interstate Commerce Commission and interveners as defendants.

2. That is it the desire of interveners to be permitted to intervene in said cause and to file answer and participate in the said proceeding, although the proceeding is primarily one to enjoin
59 the order of the Interstate Commerce Commission and to permanently set aside the order of that Commission granting common carrier rights to interveners.

3. That interveners are, under the circumstances, proper parties to the litigation and should be permitted to intervene and file their answer to test the Complaint.

And your interveners will forever pray.

T. J. McCarthy Steamship Company
and
Automotive Trades Steamship Company,
By T. J. McCarthy, *President*.

Foster, Yost & Lott,
Attorneys for Defendants, T. J. McCarthy Steamship Company and Automotive Trades Steamship Company, 3466 Penobscot Building, Detroit 26, Michigan.

[*Duly sworn to by T. J. McCarthy; jurat omitted in printing.*]

60 In United States District Court

[Title omitted.]

[File endorsement omitted.]

Order permitting intervention

Filed July 26, 1944

On reading and filing the petition of T. J. McCarthy Steamship Company and Automotive Trades Steamship Company, de-

fendants in the within cause, for leave to intervene and file answer in said proceedings and participate in said cause, and

On Motion of Foster, Yost & Lott, their attorneys,

It is hereby ordered, adjudged, and decreed that the T. J. McCarthy Steamship Company and Automotive Trades
61 Steamship defendants named in the within cause, may intervene in said cause and may file their several or joint answer to the said complaint filed in said cause, and may otherwise participate in and be a party to said proceedings along with the Interstate Commerce Commission and the United States of America, the other defendants in said cause.

ARTHUR J. TUTTLE,
District Judge.

62 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Answer of the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company, defendants

Filed July 29, 1944

Now come the T. J. McCarthy Steamship Company, a Michigan corporation, and the Automotive Trades Steamship Company, a Delaware corporation, defendants herein, and in answer to the complaint say:

I

Admit the allegations of paragraph I and II of the complaint.

II

Admit paragraph III of the complaint except that portion which states that the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company are Michigan corporations. It is admitted that the T. J. McCarthy Steamship Company is a Michigan corporation, but further answering it is alleged that the Automotive Trades Steamship Company is a Delaware corporation.

III

Admit the allegations of paragraph IV of the complaint.

63

IV

Admit the allegations of paragraph V of the complaint, but for a more detailed summary concerning the matters alleged in said paragraph respectfully refer the Court to the decision of Division 4 of the Commission, attached to the complaint as Exhibit B.

V

In answer to paragraph VI of the complaint, admit the facts therein alleged, but respectfully suggest for a complete understanding and explanation of the quotation from the Commission's report that reference be had to the entire report attached to the complaint as Exhibit A. Further answering, defendants state that there was conflicting testimony offered at the original hearing and at the further hearing concerning the need for applicants' operations between Detroit and Lake Superior ports and allege that it is the function of the Interstate Commerce Commission and not of the Courts to consider such conflicting testimony. Further answering, it is alelged that there is substantial evidence in the record to sustain the findings of the Interstate Commerce Commission that there was public need for such service and that such service was in the public interest.

VI

In answer to paragraphs VII, VIII, and IX of the complaint defendants admit that the conclusion of the Interstate Commerce Commission was based upon the facts set out in paragraph VII of the complaint and upon the facts found by the Commission in its report, Exhibit A of the complaint to which reference is made. Further answering said complaint, these defendants deny that the findings made by the Interstate Commerce Commission in its report do not sustain its ultimate conclusion that the future public convenience and necessity require the issuance of this certificate or that the conclusion of the Interstate Commerce Commission is without support under the testimony as disclosed

64 by the record and that the same is unlawful, contrary to the record or arbitrary and capricious. Further answering, reference is respectfully made to the findings of the Interstate Commerce Commission, Exhibit A attached to the complaint, page 15, in which the Commission states:

"Refusal of applicants' rights to initiate such operations with their own vessels might seriously impair their investment in those vessels, and while that fact is not controlling, the refusal would, according to this record, deprive shippers of necessary transportation facilities which would not be in the public interest."

VII

Admit the allegations in paragraph X of the complaint, except that portion of the said paragraph which alleges that formal action of the Commission has not been received on the petitions of plaintiffs, Detroit and Cleveland Navigation Company and Great Lakes Transit Corporation. Further answering, it is alleged that the petition for leave to file a joint petition of those two companies has now been formally denied by the Interstate Commerce Commission and service of the Commission's order so denying the petition deserved upon said two plaintiffs has been had on the said two plaintiffs.

VIII

Deny the allegations set forth in paragraph XI.

Wherefore defendants respectfully pray that the complaint be dismissed.

T. J. McCarthy Steamship Company,
Automotive Trades Steamship Company,
By T. J. McCarthy, *President.*

Foster, Yost & Lott,
By Sparkman D. Foster,
Attorneys for Defendants
3466 Penobscot Building, Detroit 26, Michigan,
Telephone: CAdillac 3236.

65 [*Duly sworn to by T. J. McCarthy; jurat omitted in printing.*]

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the attached answer upon each of the following counsel this 29 day of July 1944, by mailing them a copy thereof: Robert L. Pierce, Special Assistant to Attorney General, Department of Justice, Washington, D. C.; Angell, Turner, Dyer & Meek, 2104 Dime Building, Detroit 26, Michigan; Daniel H. Kunkel, Esquire, Interstate Commerce Commission, Washington 25, D. C.; Pope & Ballard, 120 South LaSalle Street, Chicago 3, Illinois; S. S. Eisen, Esquire, 140 Cedar Street, New York, New York.

Sparkman D. Foster,
Sparkman D. Foster,
Attorney for Defendants.

66 In the District Court of the United States for the Eastern District of Michigan, Southern Division

DETROIT AND CLEVELAND NAVIGATION COMPANY, A MICHIGAN CORPORATION, GREAT LAKES TRANSIT CORPORATION, A NEW YORK CORPORATION, AND NICHOLSON UNIVERSAL STEAMSHIP COMPANY, A DELAWARE CORPORATION, PLAINTIFFS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, T. J. McCARTHY STEAMSHIP COMPANY, A MICHIGAN CORPORATION, AND AUTOMOTIVE TRADES STEAMSHIP COMPANY, A MICHIGAN CORPORATION, DEFENDANTS

Bill in Equity to Enjoin, Set Aside, and Annul an Order of the Commission

Opinion Filed September 29, 1944

Before SIMONS, Circuit Judge; TUTTLE, and O'BRIEN, District Judges.

SIMONS, Circuit Judge. The plaintiffs are common carriers of motor vehicles by water upon the Great Lakes, authorized as such by the Interstate Commerce Commission under § 309 (a) of the Interstate Commerce Act, and were protestants in hearings before the Commission upon the application of the defendant steamship companies, to operate as common carriers of motor vehicles between Detroit, Michigan, and ports on Lake Erie and Lake Superior. The hearings resulted in an order of the Commission granting a certificate of convenience and necessity to the defendants under § 309 (c) of the Act, and this order the plaintiffs now seek to enjoin, set aside, and annul. The case was submitted to a court of three judges in pursuance of § 47, Title 28, U. S. C. A., and it is stipulated that the cause is submitted as upon final hearing upon the record made before the Commission.

67 The court is fully advised in respect to the finality of factual determinations made by the Commission if supported by evidence, Merchants Warehouse Co. v. U. S., 283 U. S., 501, 508, and understands that "the judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body." Mississippi Valley Barge Co. v. U. S., 282, U. S., 282, 286. The court is also aware of the basic purpose of the Transportation Act of 1920, in that "it recognized that preservation of the earning capacity and conservation of the financial resources of individual carriers is a matter of national concern; that the property employed must be permitted to earn a reasonable return; that the building of unnecessary lines

involves a waste of resources, and that the burden of this waste may fall upon the public; that competition between carriers may result in harm to the public as well as in benefit * * *. Texas & Pacific R. R. Co. v. Gulf, Colorado and Santa Fe R. R. Co., 270 U. S., 266, 277, also Texas & New Orleans R. R. Co. v. North Side Belt R. R. Co., 276 U. S., 475, 479. The court also assumes that the underlying purpose of the original Act is likewise the purpose of the amendment thereto made by the Act of September 18, 1940, covering water carriers and now incorporated as Part III, Chap. 12 of the Act.

Section 309 (a), being § 909 of Title 49, U. S. C. A., contains the so-called "grandfather clause," providing, in effect, that where an applicant for a certificate of public convenience and necessity was in bona fide operation as a common carrier by water on January 1, 1940, and continued in such operation to the date of the application, the applicant shall be entitled to such certificate as a matter of right.

68 Section 309 (c) provides that the Commission may grant such certificate also to any applicant fit, willing, and able to perform the service proposed, if such service will be required by the present or future public convenience and necessity.

Originally the applications of the defendant carriers were for certificates either under the "grandfather clause" of § 309 (a) or under § 309 (c), and sought authority as common carriers between Detroit and Lake Erie ports. Upon oral argument, however, before a division of the Commission, the applicants indicated that they also desired authority to serve ports on Lake Superior. Their applications under § 309 (a) were denied by the division on the ground that the applicants were not in bona fide operation as common or contract carriers by water on January 1, 1940. This finding was affirmed by the Commission. As to the applications under the provisions of § 309 (c), the division concluded that the evidence submitted was not sufficient to support a finding that present or future public convenience and necessity required operation by applicants, but upon hearing by the Commission an ultimate finding was made that the operations proposed will be consistent with the public interest and the national transportation policy declared in the Act, and notwithstanding protest that the order sought extended the scope of authority beyond the scope of the application, the certificate authorized included authority to serve Lake Superior ports.

69 The question of law submitted to the court is that the action of the Commission is not supported by evidence. The plaintiffs, however, rest their case upon the evidentiary findings of the Commission, and submit the proposition that these

findings do not support the ultimate finding and conclusion of the Commission as to public convenience and necessity. There is, therefore, no need for the court to give detailed consideration to the record made before the Commission, and we confine ourselves mainly to the facts developed in its report. These disclose that applicants' president, T. J. McCarthy, was affiliated with the D. & C. Company, in a soliciting capacity, for about 9 years prior to 1942; that from 1937 to 1942 two of his vessels were chartered by the D. & C. to transport motor vehicles from Detroit to Lake Erie ports, and a third vessel for the same purpose, was chartered during the 1940 and part of the 1941 season. All three vessels were originally bulk carriers but were later equipped to carry motor vehicles. Because of the cessation of manufacture of motor vehicles for civilian use, all three vessels were reconverted to bulk freighters prior to the 1943 navigation season. The applicants, however, have retained the equipment and parts originally installed, and are prepared to reconvert their vessels into motor vehicle carriers upon termination of the war. Meanwhile, some use had been made of their vessels for carriage of military vehicles to Great Lake ports during 1942, and similar shipments were in prospect for 1943 at the time of the hearing, such vehicles being carried on the spar decks while the vessels were being operated in bulk transportation.

70 At the time of the final hearing no vessels of the motor vehicle carrying type were in operation on the Great Lakes, and a large percentage of all types of vessels formerly so used had been requisitioned by the government and withdrawn from service on the lakes, although since then the applicants have advised the Commission that the government was returning to the plaintiff Great Lakes Transit Corporation, 4 of the 14 vessels of that carrier which had been requisitioned. The applications were supported by witnesses from motor manufacturing companies, the substance of whose testimony was that the vessels of the applicants were essential to the transportation of automobiles in the past, that it would not have been possible, without them, for the water carriers to have handled the automobiles offered for transportation in 1940 and 1941, and that these vessels would again be needed when normal production of motor vehicles is resumed. There was also evidence that there had been some delay in the transportation of motor vehicles by water during the 1941 season. During the seasons 1939 to 1941, inclusive, the vessels of the applicants, chartered by the D. & C. Company, handled from 64 to 74 percent of the motor vehicles carried by that company prior to the cessation of their manufacture. The peak period for the movement of automobiles on the Great Lakes during those years,

commenced in September or early October, with the production of new models. In 1940 and 1941 there were delays ranging from 2 to 4 days in the loading of automobiles from the docks at Detroit, incident to the congestion of such traffic, and because of such delays it was necessary, at times, to move automobiles by motortrucks.

71 Before the discontinuance of the manufacture of motor vehicles for civilian use, the plaintiff Nicholson operated four vessels specially designed for the purpose of transportation of motor vehicles. Of these, one was converted during 1941 into a combination motor-vehicle and bulk carrier. It also transported automobiles from Detroit to Duluth on the spar decks of its 8 bulk carriers, but its vessels had not been operated to capacity for the transportation of automobiles. It gave evidence that there had been no delay in its shipments, and that its service was satisfactory. At the time of the hearing it operated 9 vessels, 5 of which were owned and operated for the federal government. It had, however, begun negotiations to reacquire these vessels at the end of the war, intending to reengage in the transportation of motor vehicles when their manufacture is resumed, and to make available adequate transportation for such tonnage as may be offered to it.

The plaintiff Great Lakes Transit Corporation, had been engaged in the transportation of passenger and freight on the Great Lakes for more than 25 years; one of its vessels was specially equipped to carry motor vehicles, and it had also transported such vehicles on its combination passenger and freight or package and freight vessels. It expects to resume transportation when vessels again become available, and to provide sufficient vessels to meet the needs of shippers. Since the hearing, four of its vessels have been returned to it by the government and it had advised the Commission that these vessels would be in operation before the close of the 1943 season.

Like the other plaintiffs, the D. & C. Company intends, as far as it is capable of doing so, to make its former facilities, or their equivalent, available for motor vehicles at the termination of the war. At the time of the hearing it was operating 5 combination passenger and package freight vessels, the government having requisitioned two others, one a combination passenger and freight vessel and the other an automobile carrier, and the charters on the three automobile carriers owned by McCarthy's companies had been canceled or relinquished.

72 Upon these evidentiary facts the Commission found that there had been a definite need for the applicants' vessels in the transportation of motor vehicles between Detroit and Lake

Erie ports prior to the cessation of the manufacture of motor vehicles for civilian use. It also found that there was reasonable certainty that there would be a like need for them in that service at the termination of the war, or when normal production and shipment by water of motor vehicles for civilian use was resumed. It based this ultimate finding upon the evidence of Detroit automobile manufacturers that such vessels would be needed in the future, not only in transportation between Detroit and Lake Erie ports but also between Detroit and Lake Superior ports, and that in the absence of applicants' vessels it would not have been possible for the water carriers to have handled the automobiles offered for transportation in 1940 and 1941, and that with the resumption of manufacture, the use of applicants' vessels would be necessary in the handling of such traffic. It also found that refusal of the applicants' right to initiate operations with their own vessels might seriously impair their investment in such vessels, and while such fact was not controlling, denial of the applications would deprive shippers of necessary transportation facilities, and not be in the public interest. Moreover, even though the protestants expected that considerable tonnage would be available at the termination of the war, there was much uncertainty as to the length of time that might be required to procure and place in operation on the Great Lakes additional vessels adapted to their needs; that replacement by the D. & C. of its passenger and freight vessels alone would not adequately meet the needs of the service for the reason that during a substantial part of the navigation season the vessels would again be used for the transportation of passengers and their automobiles, leaving little carrying capacity for other motor vehicles, and this would also be true of some of the vessels of the Great Lakes Transit Corporation. The three vessels of the applicants could be reconverted into motor vehicle carriers without much difficulty, because the necessary materials and equipment for that purpose had been retained, and it was their intention to reconvert upon termination of the emergency. The conclusion was therefore reached that the public interest would be adversely affected if, after production of automobiles is resumed, the protestants were delayed in acquiring additional vessels concededly necessary to meet the expected increase in the demand for transportation.

73 In respect to the finding of the Commission that the vessels of the applicants were needed to supply the needs of automobile manufacturers for transportation in the period '39 to '41, the plaintiffs point out that this finding can mean no more than that their carrying capacity was required, and not that the specific vessels belonging to the applicants were required.

This, the brief on behalf of the government and the Commission, appears to concede, in the statement, "The past extensive operations of these boats on Lake Erie, even though by the D. & C. Company, clearly showed that there was a public need for the carrying capacity represented by them." This interpretation of the Commission's finding being established, the point is now made that in the absence of any showing by the applicants that their vessels were the only vessels available to the carriers to meet the transportation requirements of the automobile companies beyond that furnished by their own vessels, and in the absence of a showing that the future needs of the automobile companies for such carrying capacity can be met only by the vessels of the applicants, there is no evidence to sustain the Commission's ultimate finding that the public's convenience and necessity requires a grant to the applicants of common carrier rights. To put it more plainly, they say there is a gap in the evidence not bridged by any other evidentiary finding which necessitates a conclusion that the Commission's determination is unsupported. With this we are compelled to agree. Not only is there no finding to the effect that if the D. & C. had not chartered the vessels of the applicants there was no other carrying capacity it could have acquired, but the record to which we are cited establishes the contrary.

74 When McCarthy was testifying as to his negotiations with the D. & C., he asserted that he had asked its Freight Traffic Manager, "if, in the event sufficient business was developed in accordance with an agreement we earlier had, would they not put on the boats that he had purchased rather than chartering more outside boats from some other company, and he said 'Oh, yes, they would.'" McMillan, General Traffic Manager of the D. & C. Company, testified that if they had not obtained the ships of the defendant companies "there were many other places they could have been readily obtained." There was to this statement no contradiction. It would seem to be clear, accepting the Commission's finding of future needs based upon the past need for carrying capacity, that the shipping tonnage available before the emergency will again be available when the emergency passes, even if we are not permitted to take judicial notice of the tremendous increase in the American Merchant Marine, in all categories, since the beginning of the war.

75 It must be remembered that with the single exception of the transitory delays which occurred at the peak of the 1940–41 seasons, the water carrier service accorded the automobile manufacturers by the plaintiffs, was entirely adequate, and, as was said in U. S. v. Rosenbloom Truck Lines, 315 U. S., 50 at 54, "It was the common carriers who offered the complete trans-

portation service to the general public and the shippers." The present applicants offered no such service, and it was on this ground that their application, under the "grandfather clause," was denied. Whether it is economical and in the public interest to expect or require water carriers to maintain, throughout the navigation season, the carrying capacity needed for the peak load in September or early October, we have no occasion to inquire, and the answer is within the competency and, if upon evidence, within the exclusive prerogative of the Commission. It must be observed, however, that the full carrying capacity of the three vessels of the applicants was utilized during the periods in question, and that the grant of a certificate of convenience and necessity to the applicants will not add to the total carrying capacity of carriers engaged in water transportation, anything beyond what was available during the periods of delay, and there is no showing that the applicants intend or are able to add to their tonnage when they become authorized as common carriers. If it is proposed that the applicants acquire additional capacity, it is but added demonstration that such tonnage is or will be available to existing carriers.

76 The effect of the Commission's finding and order is to introduce new and competing carriers into a field adequately served, without the definite need for the services being shown, and this collides with the clearly defined purpose of the Transportation Act already indicated. While in arriving at this conclusion we give no weight to the argument of plaintiffs that past need offers no basis for judgment of future requirements since the economic era which is to follow a world upheaval may be subject to circumstances that no one can foresee, and so is entirely conjectural, we likewise reject, as conjectural, the conclusion of the Commission that the public interest will be adversely affected if, after the production of automobiles is resumed, the protestants are delayed in acquiring additional facilities. This conclusion fails to take note of the period required for automobile manufacturers to reconvert their plants to civilian production—an interim which has given manufacturers, labor, and the public such grave concern, and the length of which, and its effect upon the national economy, has been so much a subject of public discussion that no court or administrative body can fail to take note of it. The effect of a denial of the application, upon the investment of the applicants in their vessels, is conceded by the Commission to be without controlling force. If we correctly understand the purpose of the Transportation Act, it is neither controlling nor even mildly persuasive, for, as we understand it, the

Commission, in considering an application, is concerned only with the public interest.

77 It is true that in U. S. v. Rosenbloom Truck Lines, supra, there was involved only an application under the "grandfather clause" of the Motor Carrier Act of 1935 (49 Stats. 543, 552, 49 U. S. C. 309 (a)), while here we are now concerned with an application for certificates as new carriers, but the order of the Commission and its finding of convenience and necessity, are so inseparably based upon the experience of the applicants in operating their boats under charter to an existing carrier, that the observation of the court, in the cited case, "the result would be to create in this case two services offering transportation to the public when there had been only one on the grandfather date," becomes apposite. It is true that the court added, "without allowing the Commission to determine if the additional service was in the public interest." Here the Commission did make that determination, but almost solely on grounds advanced in support of a certificate under the "grandfather clause."

We find ourselves, therefore, in accord with the four dissenting members of the Commission, including its chairman, when they say, "the fact that the applicants' vessels were used as they were to carry automobiles prior to the present emergency and may be needed for that service when the production of automobiles is resumed, does not warrant the conclusion that there will be need for the operation of such vessels by applicants as a new carrier in the field. That will not increase the amount of service formerly provided," and also when they say, "The decision of the majority is based upon too many assumptions and suppositions to be sound as a matter of law."

78 Upon the question of the Lake Superior rights proposed to be given to the applicants, it would appear that the plaintiffs were given sufficient opportunity to present proofs with respect to that issue even though it was not submitted to the Commission in the original applications. In view of the wide latitude accorded the Commission in regulating its procedure and freeing it of the technical requirements of pleadings and proofs, and the failure adequately to show prejudice, we are not persuaded that the order of the Commission, if valid, is too broad.

It follows from our discussion that the order of the Commission authorizing the defendant companies to operate as common carriers of motor vehicles between Detroit and ports on Lake Erie and Lake Superior, will be enjoined, set aside, and annulled, without prejudice, however, to the consideration of new applications

when automobile manufacture is resumed and the public interest in their transportation can be adequately appraised under a peace economy, and without prejudice to the continuance or renewal of temporary authority.

It is so ordered.

CHARLES C. SIMONS,
United States Circuit Judge.

ARTHUR J. TUTTLE,
United States District Judge.

ERNEST A. O'BRIEN,
United States District Judge.

79 In the District Court of the United States for the Eastern District of Michigan, Southern Division

Final decree setting aside and annulling report and order of Interstate Commerce Commission.

Filed Nov. 20, 1944

At a session of said Court held in the Federal Building, Detroit, Michigan, on the 20th day of November A. D. 1944.

Present: Charles C. Simons, Circuit Judge; Arthur J. Tuttle, District Judge; Ernest A. O'Brien, District Judge.

The above entitled case having come on for final hearing on August 28, 1944, before a three-judge court, as required by the Urgent Deficiencies Act of October 22, 1913, and the case having been heard upon the complaint, the answers of defendants thereto, the entire record before the Interstate Commerce Commission in the proceedings known as Docket No. W-592, "T. J. McCarthy Steamship Company, Common Carrier Application" and No. W-729, "Automotive Trades Steamship Company, Common Carrier Application," and the written and oral argument of counsel; and the Court on September 29, 1944, having filed an opinion in said case, it is this 20th day of November 1944,

80 Ordered, adjudged, and decreed, that in accordance with said opinion of the Court, the certificate and order of the Interstate Commerce Commission entered on March 7, 1944, in the above-mentioned proceedings, by virtue of which defendants McCarthy Steamship Company and Automotive Trades Steamship Company were granted permanent operating authority as common carriers by water of motor vehicles between Detroit,

Michigan, and ports on Lake Erie and Lake Superior, be and the same is hereby annulled and set aside.

CHARLES C. SIMONS,
United States Circuit Judge.
ERNEST A. O'BRIEN,
United States District Judge.

———,
United States District Judge.

81 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Petition for appeal

Filed Dec. 18, 1944

The defendants the United States of America and the Interstate Commerce Commission, and the intervening defendants T. J. McCarthy Steamship Company and Automotive Trades Steamship Company, in the above-entitled cause, feeling themselves aggrieved by the final decree of the United States District Court for the Eastern District of Michigan, Southern Division, entered in said Court on November 20, 1944, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein said defendants consider the decree erroneous are set forth in the assignment of errors accompanying this petition, to which reference is made.

Said defendants pray that a transcript of the record, proceedings and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated December 18, 1944.

CHARLES FAHY,
Charles Fahy,
Solicitor General,
WENDELL BERGE,
Wendell Berge,
per R. L. P.
Assistant Attorney General,
JOHN C. LEHR,
John C. Lehr,
United States Attorney,

82

ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General,
For the United States of America.
DANIEL W. KNOWLTON,
Daniel W. Knowlton,
Chief Counsel,
DANIEL H. KUNKEL,
Daniel H. Kunkel,
Attorney,
GORDON C. LOCKE,
Gordon C. Locke,
Attorney,
For the Interstate Commerce Commission.
SPARKMAN D. FOSTER,
Sparkman D. Foster,
Attorney,
For T. J. McCarthy Steamship Company and Automotive Trades Steamship Company.

83 In the District Court of the United States for the Eastern District of Michigan, Southern Division

[Title omitted.]
[File endorsement omitted.]

Order allowing appeal

Filed December 18, 1944

In the above-entitled cause, defendants having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final decree of this Court entered November 20, 1944, and having also made and filed an assignment of errors and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of Court in such cases made and provided,

It is ordered and decreed, That the appeal be, and the same is hereby, allowed as prayed for.

And it is further ordered, That petitioners other than the Interstate Commerce Commission, give bond in the sum of $200 as a cost bond.

And it is further ordered, That the Clerk of Court transmit to the United States Supreme Court, as part of the record herein, the original papers, in lieu of copies thereof, as may be designated by appellants' and appellees' praecipe for transcript of the

record filed pursuant to Rule 10 of the Revised Rules of the Supreme Court of the United States.

Dated Dec. 18, 1944."

ERNEST A. O'BRIEN,
United States District Judge.

84 In United States District Court

[Title omitted.]

[File endorsement omitted.]

Assignment of errors

Filed Dec. 18, 1944

Come now the defendants the United States of America, the Interstate Commerce Commission, and the intervening defendants, T. J. McCarthy Steamship Company and Automotive Trades Steamship Company, in the above-entitled cause, and file the following assignment of errors upon which they shall rely in the prosecution of the appeal to the Supreme Court of the United States herewith petitioned for in said cause from the decree of the District Court of the United States for the Eastern District of Michigan, Southern Division, entered November 20, 1944:

1. The court erred in holding that the evidentiary findings of the Commission do not support the ultimate finding and conclusion of the Commission as to public convenience and necessity.

2. The court erred in substituting its judgment for that of the Commission upon purely administrative matters.

3. The court erred in holding that the decision of the Commission is based upon too many assumptions and suppositions to be sound as a mater of law.

4. The court erred in holding that the effect of the Com-
85 mission's finding and order is to introduce new and competing carriers into a field adequately served, without the definite need for the services being shown.

5. The court erred in stating that "It would seem to be clear * * * that the shipping tonnage available before the emergency will again be available when the emergency passes," when the Commission had found that there was admittedly much uncertainty as to the length of time that might be required to procure and place in operation on the Great Lakes additional vessels adapted to the needs of plaintiffs.

6. The court erred in concluding that the Commission made its determination as to public convenience and necessity almost solely

on the grounds advanced in support of a certificate under the "grandfather" clause.

7. The court erred in holding as conjectural the conclusion of the Commission to the effect that public interest will be adversely affected if the protestants are delayed in acquiring additional shipping facilities after the production of automobiles is resumed.

8. The court erred in concluding that the order of the Commission was illegal and void and should be enjoined, set aside and annulled.

9. The court erred in entering the final decree of November 20, 1944.

10. The court erred in failing to find that the complaint was without equity.

11. The court erred in failing to dismiss the complaint.

Dated December 18, 1944.

CHARLES FAHY,
Charles Fahy,
Solicitor General,

86 JOHN C. LEHR,
John C. Lehr,
United States Attorney,
WENDELL BERGE,
Wendell Berge,
Per R. L. P.,
Assistant Attorney General,
ROBERT L. PIERCE,
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Special Assistant to the Attorney General,
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DANIEL H. KUNKEL,
Daniel Kunkel,
GORDON C. LOCKE,
Gordon C. Locke,
Attorneys,
For the Interstate Commerce Commission.
SPARKMAN D. FOSTER,
Sparkman D. Foster,
FOSTER, YOST & LOTT,
3466 Penobscot Building, Detroit, Michigan,
For defendants, T. J. McCarthy Steamship Company and Automotive Trades Steamship Company.

95 [Citation in usual form, filed Dec. 18, 1944, omitted in printing.]

98 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Notice of appeal

Filed Dec. 18, 1944

To the ATTORNEY GENERAL FOR THE STATE OF MICHIGAN:

You are hereby notified that the District Court of the United States for the Eastern District of Michigan, Southern Division, on December 18, 1944, filed and entered an order allowing an appeal by the United States and the Interstate Commerce Commission to the Supreme Court of the United States from a decree filed and entered on November 20, 1944, in the above-entitled cause, and that the citation signed by such Court on December 18, 1944, in connection with the order allowing such appeal, is made returnable within 40 days from the date of the signing of such citation.

Attached hereto are copies of each of the following documents: the citation referred to above, the petition for and order allowing said appeal, defendants' jurisdictional statement pursuant to Rule 12 of the revised Rules of the Supreme Court of the United States, and the statement required to be served upon appellees by said Rule 12.

This notice is given to you pursuant to the provisions of U. S. Code, Title 28, Section 47a, enacted March 3, 1911, c. 231,
99 Sec. 210.

Dated December 18, 1944.

CHARLES FAHY,
Charles Fahy,
Solicitor General,
JOHN C. LEHR,
John C. Lehr,
United States Attorney,
WENDELL BERGE,
Wendell Berge,
Per R. L. P.,
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DANIEL W. KNOWLTON,
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GORDON C. LOCKE,
Gordon C. Locke,
Attorney,
For the Interstate Commerce Commission.
SPARKMAN D. FOSTER,
Sparkman D. Foster,
Attorney,
For T. J. McCarthy Steamship Company and Automotive Trades Steamship Company.

100 [Bond on Appeal for $200 approved and filed Dec. 18, 1944, omitted in printing.]

103 *Notice of filing bond on appeal omitted in printing.*

107 In United States District Court

[Title omitted.]

[File endorsement omitted.]

Praecipe for transcript of record

Filed December 18, 1944

To the CLERK OF THE ABOVE-NAMED COURT:

You will please prepare a transcript of the record in the herein entitled cause to be transmitted to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Complaint and exhibits attached thereto.
2. Answer of the Interstate Commerce Commission.
3. Answer of United States of America.
4. Intervention and answer of T. J. McCarthy Steamship Company and Automotive Trades Steamship Company.
5. Record before the Interstate Commerce Commission in No. W–592 and No. W–729, as introduced in evidence at the trial of the above-entitled cause.
6. Opinion of the Court, September 29, 1944.
7. Judgment entered November 20, 1944.

8. Petition for appeal.
9. Assignment of errors.
10. Statement of jurisdiction.
11. Order allowing appeal.
108 12. Citation on appeal.
13. Statement directing attention to paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court.
14. Notice to the Attorney General of the State of Michigan.
15. Proof of service.
16. This praecipe.
17. Cost bond.

CHARLES FAHY,
Charles Fahy,
Solicitor General,
JOHN C. LEHR,
John C. Lehr,
United States Attorney,
WENDEL BERGE,
Wendell Berge,
Per R. L. P.,
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Special Assistant to the Attorney General,
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GORDON C. LOCKE,
Gordon C. Locke,
Attorney,
For the Interstate Commerce Commission.
SPARKMAN D. FOSTER,
Sparkman D. Foster,
Attorney,
For T. J. McCarthy Steamship Company and Automotive Trades Steamship Company.

109 [Clerk's certificate to foregoing transcript omitted in printing.]

1 *Plaintiffs' Exhibit No. 1*

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. W-592

APPLICATION OF T. J. MCCARTHY STEAMSHIP COMPANY FOR A CERTIFICATE TO OPERATE AS A COMMON CARRIER IN THE TRANSPORTATION OF PROPERTY BETWEEN PORTS ON THE GREAT LAKES

Docket No. W-729

AUTOMOTIVE TRADES STEAMSHIP COMPANY (APPLICATION TO OPERATE AS A COMMON CARRIER BY WATER)

HEARING ROOM "A,"
INTERSTATE COMMERCE COMMISSION BUILDING,
Washington, D. C., Monday, September 8, 1941.

Met, pursuant to notice, at 10 o'clock a. m.
Before Charles B. GRAY, Examiner.

Appearances

F. C. Strickroot, 143 Griswold Street, Detroit, Michigan, appearing for Cadillac Cartage Company, Marine Division. J. M. Arnold, 210 Wayne Street, Detroit, Michigan, appearing for D. & C. Navigation Company. Sparkman D. Foster, 2440 Union Guardian Building, appearing for T. J. McCarthy Steamship Company, applicant, Detroit, Mich. S. S. Eisen, 140 Cedar Street, New York, N. Y., appearing for Nicholson Universal Steamship Company, protestants. Arthur R. Eldred, 143 Liberty Street,
2 New York, N. Y., appearing for Rail Carriers in Official Territory. Stanley Carpenter, 143 Liberty Street, New York, N. Y., appearing for Rail Carriers in Official Classification Territory. Frank W. Sullivan, 231 S. La Salle Street, Chicago, Illinois, appearing for Great Lakes Transit Corporation.

4 PROCEEDINGS

Exam. GRAY. Gentlemen, the Interstate Commerce Commission has set for hearing at this time and place Docket No. W-592, the application of T. J. McCarthy Steamship Company, to operate as a common carrier by water; and Docket No. W-729, application of Automotive Trades Steamship Company to operate as a common carrier by water.

Who appears for the McCarthy Steamship Company?

Mr. FOSTER. I appear for them, Mr. Examiner, Sparkman D. Foster.

Exam. GRAY. For both applicants?

Mr. FOSTER. Yes.

Exam. GRAY. Who appears for the protestants?

Mr. EISEN. S. S. Eisen for the Nicholson Universal Steamship Company.

Mr. FOSTER. Mr. Examiner, I would like to have it stipulated by the protestants that the testimony taken in the T. J. McCarthy Steamship Company case be used in the Automotive Trades Steamship Company case.

I mean the companies are asking for service over the identical routes. The companies are owned by the same interests but there are the two companies and they have both operated during 1939 and 1940 and since that time.

One is a Delaware Corporation and one is a Michigan Corporation.

5 Mr. ELDRED. Might I suggest rather than do that, that we consolidate the two cases in one docket and dispose of them in that manner, and any testimony taken in one case will apply in the other?

Exam. GRAY. Very well. I will hear both cases simultaneously.

Are there any other appearances?

Mr. ELDRED. A. R. Eldred and Stanley Carpenter, 143 Liberty Street, New York City, appearing in behalf of the rail carriers. We are protestants as to the two carriers.

Mr. SULLIVAN. Frank W. Sullivan for the Great Lakes Transit Corporation.

Mr. ARNOLD. J. M. Arnold, general freight agent, the Detroit & Cleveland Navigation Company.

Exam. GRAY. Any others?

Mr. STRICKROOT. F. C. Strickroot, the Cadillac Cartage Company, Marine Division, Detroit.

Exam GRAY. As protestants?

Mr. STRICKROOT. No; I just want to ask a couple of questions.

Exam. GRAY. Are all who have entered appearances registered practitioners before the Commission?

Mr. ELDRED. Yes, sir.

Exam. GRAY. And Mr. Eldred and Mr. Carpenter are both present?

6 Mr. ELDRED. Yes.

Exam. GRAY. In these cases on application the Commission will furnish no free copy of transcript.

Mr. Foster, will you make what presentation you care to?

Mr. Foster. Yes. We wish the record to show, Mr. Examiner, that the only person who served the company or their counsel with protests up to this morning was Nicholson Universal Steamship Company.

The first time we had any notice that these other parties were going to protest was at the hearing this morning. We don't know on what basis they are protesting or anything else. We have received no notice prior to this morning after the hearing opened that they were protesting.

Now, this is the application of T. J. McCarthy Steamship Company for a certificate as a common carrier between the ports of Detroit, Michigan, and Cleveland, Ohio, and Erie, Pennsylvania, and Buffalo, New York.

The T. J. McCarthy Steamship Company was organized in 1935; it is a Michigan corporation and has operated vessels between those ports since 1935 under various arrangements with the D. & C., the Detroit & Cleveland Navigation Company; sometimes on a profit sharing proposition; sometimes under charter arrangement; and the T. J. McCarthy Steamship Company has an agreement with Detroit & Cleveland Navigation Company for various automobiles moving between Detroit and the three other ports.

The vessel which the T. J. McCarthy Steamship Company has operated has been the George W. Mead.

The vessels which the Automotive Trades Steamship Company have operated have been the steamers Morris S. Tremaine and George Ingalls.

Those vessels all operated in 1939 and have operated continuously since that time except as the operations were interrupted by the usual ice conditions prevailing upon the Great Lakes during the winter months.

Exam. Gray. Let me ask you, Mr. Foster, are you going to be the witness for the applicants?

Mr. Foster. No; I was just making that statement before I called Mr. McCarthy to the stand.

Mr. Eisen. Mr. Examiner, before the first witness takes the stand, just as a matter of information and for the purpose of clarification, there was a petition or motion submitted to the Commission some time ago by the admission of a show cause order against the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company with respect to the propriety of their filing tariffs this year with the Commission.

No action was taken on that motion. I have been given to understand by the Commission that that petition or motion would be considered in the disposition of this proceeding; that is,

8 the disposition of that motion would be made simultaneously with the disposition of this proceeding.

Am I correct in my understanding?

Exam. GRAY. That is correct. The Commission notified Mr. Milton P. Bauman with whom I understand you are associated.

MR. EISEN. That is right.

Exam. GRAY (continuing). That no action would be taken on the joint protest filed but the matter would be regarded as a protest to the issuance of requested certificates; and a copy of that letter was sent to the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company.

MR. EISEN. I just wanted to eliminate any question of surprise or anything like that in the course of the hearing.

MR. FOSTER. No; we understood there would be on order of the Commission to show cause made until there was a final hearing.

MR. SULLIVAN. Further, Mr. Examiner, the letter which was sent at that time not only to Nicholson Universal and Mr. Bauman but to the Nicholson Transit Company stated that the motion will be considered in the nature of a protest.

MR. FOSTER. Well, that is quite agreeable. Protest to the granting of the right, I suppose.

Exam. GRAY. Is that all?

MR. FOSTER. That's all.

T. J. McCarthy, being first duly sworn, testified as follows:

9 Direct examination by Mr. FOSTER:

Q. Will you give us your name?

A. T. J. McCarthy.

Q. And where do you reside?

A. Detroit, Michigan.

Q. Are you connected with the T. J. McCarthy Steamship Company?

A. Yes, sir; I am.

Q. And in what capacity?

A. President.

Q. When was the T. J. McCarthy Steamship Company organized?

A. In 1935.

Q. Does the T. J. McCarthy Steamship Company own any vessels?

A. Owns the Steamship George W. Mead.

Q. Owns the Steamship George W. Mead. How long has the company owned that vessel?

A It has owned it since 1935 but had a charter in 1934.

Q Does the T. J McCarthy Steamship Company have a solicitation agreement with the Detroit & Cleveland Navigation Company?

A It has.

Q. Has the Steamer George W. Mead been operated in the transportation of automobiles between Detroit, Michigan, and Cleveland, Ohio, Erie, Pennsylvania, and Buffalo, New York, continuously since 1939?

A. It has.

10 Q. And being operated at this time?

A. Still working.

Q. Are you connected in any way with the Automotive Trades Steamship Company?

A. I am president of the Automotive Trades Steamship Company.

Q. And what if any vessels does that company own?

A. They own the Steamer Morris S. Tremaine and George Ingalls.

Q. And have those vessels likewise been operated in the automobile traffic between the ports mentioned?

A. In '39 or '40?

Q. '39 or '40.

A. Yes.

Q. Are they being so operated at this time?

A. Yes.

Q. The application in each of these cases was prepared under your direction?

A. Yes.

Q. And you are familiar with the contents of each of the applications and the data set out on the various exhibits?

A. Yes, sir.

Q. How many revenue calls were made by these companies' various ships during 1940 and up until the time of the filing of this application?

A. Up to the—from January 1, 1940, the date of application, to Cleveland, 78 trips with the Steamer George W. Mead; to

11 Buffalo, 78 trips, revenue trips; and Cleveland, 51 trips. On the Automotive Trades Steamship Company——

By Mr. ELDRED:

Q. Did you say 78 to Cleveland with the Mead, and then you said 51 again?

A. No; I didn't.

Q. Would you mind repeating those figures?

A. Cleveland, 78; Buffalo, 78; Detroit, 51; with the Steamer George W. Mead.

On the Steamers Ingalls and Tremaine, the Automotive Trades Steamship Company between Detroit and Cleveland and Detroit and Buffalo, between Buffalo and Cleveland, 117 trips to Cleveland; 176 to Buffalo; and 85 to Detroit; from the time January 1, 1940, to the filing of the application.

By Mr. FOSTER:

Q. In the spring of 1937 did the Detroit & Cleveland Navigation Company charter from T. J. McCarthy Steamship Company the Mead; and from the Automotive Trades Steamship Company, the Tremaine?

A. They did.

Q. And did that charter provide that the D. & C. might from year to year renew that charter?

A. The D. & C. had the option of renewing the charter each year by notification or order—on February 1st of each year of the exercise or non-exercise of their option to charter for the following year.

Q. Yes. And under the charter arrangement what ex-
12 penses in connection with the operation of these ships did you as owner bear?

A. The charter provides for both the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company to pay the cost of fitting out in the spring and lay-up in the fall of the year, materials, replacements and repairs of all kinds, and certain wages of the men previous to the time the D. & C. takes the boat over in the spring of the year putting in operation, and after the D. & C. turn the boat back until such time as the vessel was laid up.

Q. And on some of the so called ten-month men, the licensed personnel, in both the forward and after end, do the two companies assume part of that expense?

A. They do.

Q. Part of those salaries?

A. They do.

Q. Under your arrangement with the D. & C.?

A. Yes.

Q. And any orders which you receive from the Bureau of Marine Inspection & Navigation as to any changes, any structural changes which has to be done on those vessels, that is also the obligation of the owner in each instance?

A. To meet the requirements of the steamship inspection and insurance, that is an obligation of the owner.

Q. And that condition must be maintained by the owner
13 during the charter period?

A. During the charter period.

Q. Did each of these companies file tariffs prior to the 28th of February, in pursuance to the terms of the 1940 transportation Act?

A. They did.

Q. As common carriers?

A. As common carriers. Port to port rates.

Q. And those tariffs which are the respective companies' ICC numbers 1 to 9 are now on file with this Commission?

A. That's right.

Q. And the Detroit & Cleveland Navigation Company did exercise their option for the use of these vessels during the current season?

A. For this year; yes.

Q. And they likewise chartered the Steamer Ingalls on which they had no option?

A. Yes. They had no option. They chartered that this spring.

Q. And the situation is you are soliciting the new automobiles for the T. J. McCarthy Steamship Company and these vessels are all at this time operating in the transportation of automobiles and package freight, that is, steel and other products?

A. That is true with the exception that at the present moment due to seasonal model changes one of the vessels of the three is laid up that is, the Steamer Morris S. Tremaine is laid up

14 temporarily.

Q. And have you operated at least two of these ships continuously since the opening of navigation?

A. Yes; since the opening of navigation.

Q. Have either of the vessels made a trip to Erie, Pennsylvania, during the current season?

A. No.

Q. In the past there has been transportation into Erie, Pennsylvania.

A. Yes.

Q. And would you explain just why there was on various occasions transportation into Erie and why it is not a regular operation?

A. Quite frequently it is possible due to ice conditions at the eastern end of the lake, that is, the harbor at Buffalo and the lake west of Buffalo, it is impossible to get in with a vessel, but you can get into Erie sometimes two or three weeks earlier than you can to Buffalo. Those trips that are made to Erie are an emergency trip due to the fact that you can not get into Buffalo and the business is there and it saves quite a lot of time and expense for the eastern trucker.

Q. That is why you filed on rates to Erie, Pennsylvania?
A. That is the reason.
Q. Mr. McCarthy, when did you first become associated with the Detroit & Cleveland Navigation Company?
15 A. In 1933.
Q. And at that time what facilities did they have available for the movement of automobiles?
Mr. EISEN. I am going to object to that. This is a grandfather application of the T. J. McCarthy Steamship Company and I don't see what relevancy it has as to what facilities the D. & C. had, or any other line had. This is not a public convenience and necessity case at all. I think the testimony should be confined to the activities of the T. J. McCarthy Steamship Company.
Mr. FOSTER. I am leading up to that now.
Exam. GRAY. I will receive that subject to your objection.
The WITNESS. The D. & C. had six passenger vessels that they operated, had been operating for several years.

By Mr. FOSTER:

Q. How many of those passenger vessels operated between Detroit and Cleveland and Detroit and Buffalo?
A. Four, as a rule, an overnight boat from Detroit to Cleveland, and vice versa; and to Buffalo. The other two boats were used on another run, perhaps up-lake, something of that sort, but never more than four boats in the navigating season.
Q. In the Detroit & Cleveland Navigation Company were the automobiles such as they might carry on their regular passenger boats?
16 A. That's right.
Q. Now, these passenger vessels, did they at that time and do they still transport tourists' automobiles?
A. Oh, yes. A great many.
Q. And is the capacity for new automobiles on those vessels cut down considerably during the summer months?
Mr. EISEN. The same objection. I don't see what application that has as to the grandfather application of the T. J. McCarthy Steamship Company. I can not see what bearing that has on this proceeding, which is a grandfather application of T. J. McCarthy Steamship Company.
Mr. FOSTER. We think it has a very definite bearing on the whole situation as a background of the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company.
Exam. GRAY. It is leading up to the reason for the chartering of the vessels?
Mr. FOSTER. That's right.

Exam. GRAY. I will receive it.

Mr. FOSTER. Will you read the question?

(Question read.)

The WITNESS. During the tourist season which usually starts in June, until some time in September, the passenger vessels carry a great many tourists driving through who use the facility between Detroit and Cleveland and vice versa, to Detroit and
17 Cleveland, and the capacity for new automobiles is in a great many cases absolutely nil.

By Mr. FOSTER:

Q. And as the new automobile busines gradually developed, it was necessary to add new and further facilities?

A. That's right.

Q. By the handling of new automobiles?

A. Yes.

Q. And did you have an arrangement with the Detroit & Cleveland Navigation Company that as it was necessary to add these facilities, that you might add them?

A. That was in our original agreement.

By Exam. GRAY:

Q. While you were associated with the D. & C. Navigation Company?

A. While I was associated with the D. & C. Navigation Company. At the time I became associated with them.

By Mr. FOSTER:

Q. But your agreement with the Detroit & Cleveland Navigation Company was a percentage of the revenue. Is that right?

A. Percentage of the revenue, yes.

By Mr. SULLIVAN:

Q. Was your charter hire based on a percentage of the business?

A. No; the charter hire was based on the percentage solicitation.

By Mr. FOSTER:

Q. But previously one of your chartered boats did have that form?

A. That's right. It had a percentage of the gross revenue.

18 By Mr. EISEN:

Q. When what that, so we might have the record clear, what year was one of the boats chartered on a percentage basis?

A. I am not positive whether it was 1934 or early in 1935. I haven't the records with me.

By Mr. FOSTER:

Q. And in 1937 did the T. J. McCarthy Steamship Company enter into a contract with the Detroit & Cleveland Navigation Company for the solicitation of new automobiles similar to the contract which you had previously had as an individual?

A. Yes.

Q. And what was the length of that contract?

A. Until the end of 1942.

Q. Until the end of 1942. And it was at the commencement of the season or about that time in 1937 that the Detroit & Cleveland Navigation chartered one vessel from each of those companies?

A. Yes.

Q. And the charter contained an option that they might renew that charter from year to year for a period of five years?

A. That is correct. May I—the recollection comes back to me now, in the fall of 1936 the steamer Morris S. Tremaine was operated on a percentage basis also; and in 1937 both the T. J. McCarthy Steamship Company's Mead and the Automotive Trades Steamship Company Morris S. Tremaine were chartered to
19 the D. & C. on a charter hire.

Q. Has a considerable amount of money been spent to equip these boats especially for automobile and package freight?

A. Yes. They were originally bulk freighters. The bulk freighters—the work of conversion necessitated taking out bulkheads, putting in elevators between decks, tie-downs, in order to fit the vessels out to carry automobiles.

By Exam. GRAY:

Q. That was done with all three vessels?

A. The Steamer George W. Mead was fitted out for automobiles when I bought it but the other two were bulkers, the Tremaine and the Ingalls.

Q. While you are there, can you give us the capacity, car capacity of each ship?

A. Yes, the Steamer George W. Mead is approximately 250 cars, plus or minus 5 or thereabouts, depending on the size of the car or make of car; and the Morris S. Tremaine and the George Ingalls are each 400 car capacity boats.

By Mr. FOSTER:

Q. You have no way of knowing, Mr. McCarthy, from time to time, whether the Detroit & Cleveland Navigation Company are going to exercise the option on these vessels?

A. Nothing until February of the year for which—they have the right to exercise the option up to February 1st of the ensuing year. No advance notice is ever given.

Q. And you have received no notice from them at this time as to what their intentions are for next year?

20 A. No.

Q. Nor did you receive any notice last winter up until about the time that the option expired?

A. That's right.

By Mr. SULLIVAN:

Q. What is right?

A. That last year we didn't get notice until the option time had—option date had arrived.

By Mr. FOSTER:

Q. None of these vessels could be used for any other service without the expenditure of a large sum of money. Is that right?

A. That is absolutely so.

Q. Have you any idea, Mr. McCarthy, as to how many automobiles have been handled by the Detroit & Cleveland Navigation Company from the opening of the season up until, say, the end of August?

A. This year?

Q. Yes.

A. Approximately 75,000 new cars.

Q. Approximately 75,000?

A. 75,000 new cars.

Exam. GRAY. Please tell me when the season opened.

By Mr. FOSTER:

Q. When did the season open this year, Mr. McCarthy?

A. Rather early this year, in April. I can give you the exact date. This was an early season on the Great Lakes (ex-

21 amining paper). April 1st to Cleveland, and April 9th to Buffalo.

By Exam. GRAY:

Q. Can you give me—is there any usual month or date of opening and closing?

A. To Cleveland, usually the month of March, latter part of March; and to Buffalo, that is very, very indefinite but as a rule you can get into Buffalo some time around April, although there have been some winters of severe winds and adverse winds that blow the ice to the lower end of the lake. That is, it is well into May before navigation opens.

By Mr. FOSTER:

Q. And when do they go to Lake Superior ports?

A. I am not familiar with that. The insurance season starts, regular insurance season April 15th to November 30th, that is the

insurance season on the Great Lakes; and that would apply to Duluth and the upper lakes as well as Lake Erie.

Q. In order to operate prior to April 15th or after November 30th, is it necessary for you to obtain pre and post season insurance?

A. Yes; it is necessary to obtain higher premium rates insurance to cover your operation, post and pre season—pre season and post season.

Q. Mr. McCarthy, can you say approximately what percentage of this 75,000 automobiles have been transported on vessels owned by the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company?

A. Well, up to date I would say somewhere between 70
22 and 75 percent of the new cars that the D. & C. have handled have been transported on the three vessels under discussion, the Mead, Tremaine and Ingalls.

I have the figures totalled, not in percentage, however, but the total figures, if you care to have them.

Q. Do you have those figures available?

A. Yes.

Q. Suppose you give them.

A. The Steamer Morris S. Tremaine has carried to August 22nd 20,430 cars Cleveland and Buffalo.

The Steamer George Ingalls to September 2nd, 19,386 cars.

By Exam. GRAY.

Q. To Cleveland?

A. Cleveland and Buffalo, both ports.

And the Steamer George W. Mead to August 27th 14,731 cars.

By Mr. FOSTER:

Q. The three boats moved approximately 55,000 automobiles?

A. 55,000 of the 75,000 automobiles moved to date.

Q. Are you familiar, Mr. McCarthy, with the various companies, all of whom have protested here, are you familiar with their operations in the transportation of automobiles?

A. Yes; I think so.

Q. And with the capacities of their various vessels?

A. Yes.

Q. Would there have been enough automobile vessels to have moved this traffic on Lake Erie without the use of the
23 vessels owned by the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company?

Mr. EISEN. I am going to object once again, Mr. Examiner. It seems to me Mr. Foster is more and more bringing into this proceeding the question of public convenience and necessity. It has

not place in this proceeding. This is purely a grandfather proceeding. The only thing the application calls for is proof that the applicant was in bona fide operation during the grandfather period.

Beyond that testimony and proof and exhibits within the scope of this hearing, I must object very strenuously to any testimony about that.

Exam. GRAY. No; the application is for a certificate to operate as a common carrier and that I think justifies the showing of necessity for operation.

Mr. SULLIVAN. I have this further objection, Mr. Examiner.

Mr. Foster's question to the witness directs the witness to perform a function of the Commission. If he wants to put in the numbers and capacities of the various ships, that is different. It is for the Commission to reach the conclusions.

Exam. GRAY. It can be received as his opinion.

Mr. EISEN. There is no question of whether there is any other carrier. The question is whether this carrier was in bona
24 fide operation on January 1, 1940, and has continued to be so since.

What the other carriers are doing and have done has no bearing whatever on the rights of this applicant.

Mr. FOSTER. Mr. Examiner, I just can not agree with this narrow construction because all of these instructions to all of the applicants are to state in detail the particulars of the boats they had chartered and the boats they owned and had chartered to others.

Certainly your contention as to the scope of this application must be correct, because otherwise if these vessels would not be chartered at the end of the charter period someone who has been operating on this run would end up without any rights whatsoever. The charterer could just simply say, "I am sorry, I am not going to charter any more. I have chartered those boats and have used them but I am not going to charter them and of course you can operate them."

Mr. EISEN. Mr. Examiner, part 3 of the Act with respect to the issues here is an exact counterpart of part 2. And the Commission has already ruled with respect to the counterpart to the effect that the only proof in a grandfather application is the question of whether the applicant was in bona fide operation on the grandfather date and has so operated continuously without interruption.

The Commission has consistently refused in all hearings that have come to my attention, and I have read I think at
25 least 90 per cent, testimony in a grandfather hearing was limited to that.

I have run into the same thing a number of times when I represented the applicants and I have been curtailed and precluded from submitting public convenience and necessity data and have had to file a separate application.

I think the applicants in this proceeding have been placed squarely on notice as to the interpretation of that Act.

The application is a grandfather application and the only proof is that permitted in the section of the Act, and anything with respect to public convenience and necessity has no place in this hearing.

Exam. GRAY. Very well. I will overrule your objection, Mr. Eisen, and receive the witness' statement as his opinion as to the facilities on the lakes.

By Mr. FOSTER:

Q. Mr. McCarthy, you have given it as as your opinion that the automobiles that have been moved, could not have been moved without the service of the three vessels belonging to these two applicants. Will you state on just what you base that opinion?

A. Well, over a period of years there have been times when the automobiles have piled up on the docks even with more vessels in operation than there were last year; and it was necessary that we have another boat, or, that the D. & C. Navigation
26 Company last year and the year before, in order to move the volume of traffic offered; and it would seem that the necessity is proven by the fact that they have been in operation.

Q. And up until this year there were automobiles moved on the decks of the conventional boat carriers, were there not?

A. To Lake Erie ports?

Q. No; to up-lake ports.

A. Up-lake ports, yes, there were.

Mr. ELDRED. Now, we are getting way out of this scope.

Mr. FOSTER. No; we are not. I just wanted to show that some of the other automobile boats have now been by necessity operated on Lake Michigan and Lake Superior.

Mr. ELDRED. I move that that last answer be stricken from the record as irrelevant and incompetent to this proceeding.

Exam. GRAY. I will overrule the objection.

Mr. ELDRED. Note an exception, please.

By Mr. FOSTER:

Q. Do you know of your own knowledge, Mr. McCarthy, whether or not a large number of automobiles in the past up until this year were shipped to Lake Michigan and Lake Superior ports on the decks of automobile boats?

A. Yes.

Mr. SULLIVAN. You mean the decks of bulkers, don't you?
Mr. FOSTER. Yes.

By Mr. FOSTER:

Q. Do you know whether that practice has been
27 discontinued except on the decks of bulkers which the Nicholson Universal have under charter this year?

A. Yes. I don't know about Great Lakes Transit but I know the bulkers no longer carry automobiles on the decks except such as are operated by Universal and Nicholson.

By Mr. EISEN:

Q. Do you know of your own knowledge that the Nicholson ships automobiles on the decks, boats under charter?

A. Not as I understood it.

Q. You said under charter.

A. Will you please repeat your question?

Mr. EISEN. Have the reporter repeat Mr. Foster's question.

Mr. FOSTER. You can ask on cross-examination

Mr. EISEN. No, I object, then. I want to know if he knows the answer of his own personal knowledge. That was Mr. Foster's question.

The WITNESS. Ask the question, please, again.

The REPORTER (reading). "Do you know whether that practice has been discontinued except on the deck of bulkers which the Nicholson and Universal have under charter this year?"

The WITNESS. I would say yes, and may I qualify it by saying that I know in addition to the charter boats Universal and Nicholson operate they have some of their own bulkers up there that they own and they carry cars on the deck.

Mr. ELDRED. Mr. Examiner, might I inquire the theory of this line of testimony when the application here covers between
28 Detroit and Cleveland and Detroit and Buffalo? Why are we going up on the upper lakes in the testimony? What has that to do under any possible circumstance with this application?

Mr. FOSTER. If you will just wait a moment, I think I will develop it.

Mr. ELDRED. Well, no. I don't think we have any right to go all over the field here. We might as well go on the Atlantic Ocean as the upper lakes. We have here a definite territory. Now, if we can go on the upper lakes we can go on the Atlantic Ocean just as well.

By Mr. FOSTER:

Q. Mr. McCarthy, do you know of your own knowledge that all through 1940 the Minnesota-Atlantic Transit and the Nichol-

son Universal did use other bulkers in the transportation of automobiles to the upper lakes?

A. They did.

Mr. ELDRED. What has that to do with this application? We have definite territory that this applicant has applied for.

Exam. GRAY. It is my understanding that he is endeavoring to show that the practice of using the decks in the eastern lakes was discontinued.

Mr. EISEN. This whole testimony is as to the upper lakes. He hasn't testified about Lake Erie at all. That is the basis of the objection.

Mr. FOSTER. We want to develop it has been necessary to put regular automobile carriers on the upper lakes, eliminating Lake Erie as a result of it.

Exam. GRAY. All right. Develop that.

Mr. ELDRED. May I inquire what the witness meant by "other bulkers?" I didn't understand his answer. Other than what?

The WITNESS. Other than the ones that were under charter. The Nicholson Universal have some boats under charter, the Cornelius, Jr., and the Adam Cornelius. There are two Corneliuses. They owned the South Park, which was an automobile boat which has been converted to a bulker; and the Steamer Penobscot—both of which are bulkers now, but they do carry automobiles on the decks to the upper lakes.

By Mr. FOSTER:

Q. The Steamer South Park up to her recent conversion had been used primarily on Lake Erie, had she not?

A. Yes.

Mr. EISEN. I am going to object to that, to this witness testifying about that. We will put our own witness on. Let the witness testify about his own operations.

By Mr. FOSTER:

Q. Mr. McCarthy, there have been some movements of automobiles in 1939 and 1940 likewise between Buffalo and Cleveland, have there not?

A. Yes; there have been Ford and Chevrolet cars from the Buffalo plants to Cleveland.

Q. And both of these companies have moved some of those automobiles?

A. Both of those companies have moved some of those automobiles.

Mr. ELDRED. Do I understand the applicant is going to support these statements by documentary evidence as to the movements, when they occurred?

Mr. FOSTER. I had a long talk with Mr. Talmadge about that and if the Examiner decides the witness' testimony is not sufficient and the Examiner wants us to present exhibits, they will certainly be presented.

Mr. ELDREDGE. I will withdraw it.

Exam. GRAY. The objection has been withdrawn, Mr. Foster.

Mr. FOSTER. I think that's all.

Mr. EISEN. I have some questions.

Cross-examination by Mr. EISEN:

Q. Mr. McCarthy, I understand that your application is for common carrier rights, is that right?

A. That's right.

Q. Are you in a position to supply to the Commission documentary evidence showing transportation in the name of the T. J. McCarthy Steamship Company, billings by the steamship company covering the transportation you have just discussed?

A. No.

Q. Am I correct in my understanding that your company's whole request for grandfather rights is predicated entirely on the charter arrangement that you had with the D. & C.?

31

A. No.

Q. It is not predicated on the charter?

A. Not entirely.

Q. It is predicated on that and what else?

A. The fact that we assist in the maintenance of these boats, we assist in the scheduling of the boats, as to their movements, and in the operation of the boats.

Q. Well, then let me rephrase the question:

Am I correct in stating that your basis for requesting grandfather rights or common carrier rights is the relationship between the T. J. McCarthy Steamship Company and the Detroit & Cleveland Navigation Company?

Mr. FOSTER. I object to that question. We filed an application here and I don't think an applicant has to go into his theories of why he claims these rights.

Mr. EISEN. I didn't understand his case. I am asking upon what he is predicating his case. I am summing up his case and asking if that is his understanding of it.

Mr. FOSTER. I submit the question is wholly improper. He submitted his application and testified that his vessels operated on these routes and I say the question is wholly improper.

Exam. GRAY. No; I think the question is proper, Mr. Foster. The protestant does not clearly understand the application, he is trying to be informed.

Mr. EISEN. I don't, your Honor, and the witness states he has no documentary proof. I am trying to find out on what he seeks grandfather rights. I think I have that right. I think the Commission has the right——

EXAM. GRAY. Yes. You may proceed.

The WITNESS. And the ownership of the vessel under charter to a common carrier.

I am not clear as to just what my rights are.

By Mr. EISEN:

A. And it was on that basis that we filed our application, to find out just what our rights are.

We figure we are a common carrier and I think it is up to the Commission to decide whether we are or not.

Exam. GRAY. The Commission wants as much information as it can get about your operations.

By Mr. EISEN:

Q. I see.

Q. Have you chartered the vessels here under consideration to any person or carrier since 1937 when you entered into the charter arrangement with the D. & C.?

A. The Steamer George Ingalls was operated as a bulk carrier.

Q. Well, let me prefix my question. All of my questions apply only to automobile carriage. Then we won't be confused at all.

I am only talking about the transportation of automobiles.

A. Yes. No; we did not charter the boats to anybody else but the D. & C. Navigation Company.

Q. Am I correct in understanding your testimony, that with the opening of navigation you turn your vessels over to the Detroit & Cleveland Navigation Company for the transportation of automobiles?

A. That's right.

Q. When you turn your vessels over to the Detroit & Cleveland Navigation Company I presume the crew is hired to operate your vessels?

A. Previous to the vessel being turned out it is crewed and manned and ready to go.

Q. Now, when the Detroit & Cleveland Navigation Company takes over the vessels, who is the employer?

A. The Detroit & Cleveland Navigation Company.

Q. Does the Detroit & Cleveland Navigation Company pay the salaries of those individuals?

A. Yes.

Q. Does the situation of master and servant between them apply as to Detroit & Cleveland and the individuals?

A. That's right. There are certain parts of the salary in the fitting out and layout that are charged back to me.

Q. I am not talking about lay-over periods. I say as of the date the vessel is taken over to be put in operation. Now, who pays Social Security of those men, during the period
34 the vessels are operated?

A. From the time the D. & C. takes them over that is all taken care by the D. & C. Navigation Company.

Q. And who pays Workmen's Compensation?

A. D. & C. Navigation Company.

Q. Who pays officers' salaries?

A. D. & C. Navigation Company.

Q. Who stands such expense as the cost of fuels, oils and grease for the operation of the vessels?

A. D. & C. That is all in the charter.

Q. And who stands the expense of engineer supplies and steward's supplies—and such matters?

A. D. & C.

Q. And who pays the cost of towing such vessels if such towing is required?

A. D. & C.

Q. And who pays the cost and expense of upkeep during the period they are in operation?

A. D. & C. Navigation Company.

Q. And that includes the vessel itself, the machinery and boilers?

A. Except as to such things that may be required by the American Bureau of Shipping or the U. S. Steamboat Inspectors, during the lifetime of the charter.

Q. I mean if something goes wrong with the machinery
35 while the boat is in operation, who repairs it?

A. D. & C. Navigation Company.

Q. And who repairs the boilers if they blow while the ship is in operation?

A. We haven't had that happen.

Q. Well, isn't it a matter of fact that your charter specifically provides that the upkeep of the boilers and other appurtenances shall be taken care of by the D. & C.?

A. No; the charter provides during the operating season that we have the boat in condition; it has to be inspected by the government, repairs made and the boat in condition.

Q. I asked you in each instance during the time the boat is in operation. I didn't inquire anything at all about the lay-up period, I am only inquiring about the period the boat is in operation.

If the boat is in operation today between Buffalo and Cleveland and the boiler blows, does the D. & C. call upon T. J. McCarthy Steamship Company to repair that?

A. They might call upon the insurance company.

Q. That is not my question.

Mr. FOSTER. He said it never happened and he didn't know. You have the charter before you there apparently.

Mr. EISEN. Yes; I believe.

Mr. FOSTER. What do you see about boilers?

Mr. EISEN. It says the D. & C. will pay all costs of
36 maintenance and operation of such vessels including "without limiting the generality of the foregoing, such expenses as wages of licensed officers and of the crew, cost of fuel, oil, grease and engineers' supplies, and all supplies necessary or proper for the steward's department, supplies for the mate's department, towing expenses, repairs and upkeep of said vessel and equipment, machinery, boilers and appurtenances other than those which may be recoverable under the insurance policies."

The WITNESS. That is all in the charter, and that is correct.

By Mr. EISEN:

Q. If during the course of the operation of the vessels by the D. & C. during the period of open navigation any portion of the vessel is consumed, I presume, or misused, or requires replacement because of its use, is missing or damaged, isn't it a fact that the D. & C. must replace the used portion as well as the damaged or missing portions before the boat is returned to you?

A. Not as you state it.

Q. Well, you state it.

A. After 90 days after the vessel has been in operation each year, if any part of the vessel's equipment like lines, hawsers, cables——

Q. All right. I will take that from you.

A. That is my expense.

37 Q. In the event of any accident caused by or unto the steamers you charter to the D. & C. while under operation by the D. & C., can you or your company be held accountable for or does D. & C. agree to indemnify and save you from all such expenses or actions?

Mr. FOSTER. Mr. Examiner, I submit that is a legal conclusion and if he has the charter, it speaks for itself.

Mr. EISEN. I think the charter should have been put in.

Exam. GRAY. I think the applicant can answer the question.

The WITNESS. That wouldn't be a hundred percent D. & C. expense. It might be passed on to me under certain conditions.

Mr. EISEN. I submit in this connection, Mr. Examiner, this is the wrong claim. It is necessary to review the charter rather than just submit it because apparently the applicant has different ideas concerning the language of the charter which I think it might be good to clarify. I expect to introduce the charter through an appropriate witness later on but this clarification might help the record.

By Mr. EISEN:

Q. Now, will you clarify this statement which I read from the charter:

"It is understood and agreed, however, that the charterer will indemnify and save harmless the owner and steamer George W. Mead."

And the same clause appears in the other charters covering the other two vessels.

38 "Any and all claims."

I repeat: "Any and all claims arising out of the operation of such steamer of any nature whatsoever not covered by said policies of insurance."

Now, will you reconcile that statement with the statement that at times you are responsible?

A. Yes; by specific instances. Just very recently a requisition was put in by one of the captains for a life boat cover. The D. & C. rejected that and said that was up to the owner to supply because it should have had it on in the spring.

Q. Let me repeat my question: In the event of any damage due to collision or any cause in which the vessels of your company are participants while under the operation of the D. & C., are you ever responsible?

A. No. Not in case of collision. You were speaking about maintenance, as I understood it.

Q. No; no. I said damage. Now, are you aware of the fact that the Detroit & Cleveland Navigation Company has filed a grandfather application predicated on the precise operations of the vessels here involved in connection with which you are seeking the grandfather rights?

A. They have filed an application for grandfather rights.

Q. Predicated on the operations of the very vessels and very ports of call and trips that you have here enumerated?

A. We have submitted that; yes.

39 Q. Do you believe that the Commission should grant operating rights to both the owner and the charterer of the vessel?

A. The owner of the vessel has no guarantee of a charter after this year.

Q. Can you at any time during the period of navigation instruct or order the D. & C. Navigation Company to send that vessel to any specified port?

A. By agreement with them.

Q. By what?

A. By agreement between the operating men of the D. & C., and ourselves, we have agreed to send that boat to a certain port.

Q. Can you order?

A. Not personally, no.

Q. Can the applicant, either through you or an officer of the applicant, order the D. & C. to send the Steamer Mead, Tremaine or Ingalls to the port of Buffalo rather than the port of Cleveland?

A. No.

Q. Can you in any way, shape or form interfere with the operations of those vessels during the period of open navigation?

A. Do you mean help?

Q. No. Interfere. Order them to run more frequently or less frequently, order them to be tied up or not tied up?

A. No; that is all within their province.

40 Q. Have you any authority or can you exercise any control whatsovere over the vessels, the three vessels enumerated, during the period of navigation?

A. No.

Q. Have you in 1939 had that authority?

A. No.

Q. Have you in 1940?

A. No.

Q. Have you that authority today?

A. No.

Q. You stated to a question put to you by your counsel, I tried to take it verbatim—"Have you operated ships to these various ports since the opening of navigation this year?"

You answered yes.

How have you operated those ships when you have exercised no control over them? Will you please explain that?

A. Just that I perhaps misunderstood the question. I have not personally operated any ships.

Q. You mean you personally?

A. Me personally or T. J. McCarthy Steamship Company have not operated any vessels.

Q. When I speak about the Mead and T. J. McCarthy, the same questions would apply with full force to the steamers Ingalls and Tremaine?

A. The same questions that you have asked?

41 Q. Yes. The same questions and answers.

A. I would say yes.

Q. Now, just to clarify the record a bit, I think you said that you have had charter arrangements with the D. & C. as to the Mead continuously since February 1, 1939.

A. Yes.

Q. And you similarly testified as to that with respect to the Tremaine. Is that right?

A. That is right.

Q. And you similarly testified as to that with respect to the Ingalls. Is that right?

A. No.

Q. Well, you did, but I didn't think you meant to. Will you tell us the story with respect to the Ingalls?

A. The Ingalls was operated in—the fall of 1939——

Q. I am talking about automobiles only now.

A. Well, you asked me the question. I would like to answer it—as a bulk carrier in the grain trade, coal and so forth, to Lake Michigan and Lake Superior and it was converted in the spring of 1940 and was chartered to the D. & C. Navigation Company immediately upon the opening of navigation in 1940, and operated all during the season of 1940 by the D. & C. Navigation Company.

Q. As I understand your testimony also, Mr. McCarthy, the only time that you have had anything to do with the vessels
42 which are the subject matter of this proceeding was during the season of closed navigation, that is, from November 30th and through March of each year when the vessels were tied up and not in operation. Is that correct?

A. That's right.

Q. And during the period of open navigation when the vessels were in operation the only one that had control, supervision or direction thereover was the Detroit & Cleveland Navigation Company.

A. That's right.

Q. And in all instances, I presume—correct me if I am wrong—where the Detroit & Cleveland Navigation Company carried automobiles, irrespective of whether they were carried on the three vessels, the Mead, Tremaine or Ingalls, or the vessels of the Detroit & Cleveland Navigation Company, they moved under Detroit & Cleveland billings?

A. That's right.

Q. Now, in 1939, when automobiles were moved on the Great Lakes between ports involved in your boats or the boats of the Detroit & Cleveland Navigation Company, what tariffs or rates applied, whose tariff?

A. Lake Erie Tariff Bureau and D. & C. tariffs.

Q. By Lake Erie, do you mean an agency tariff?
A. Agency tariff.
Q. What boat lines participated in the agency tariff?
43 A. The D. & C. Navigation Company, the Nicholson Universal, the MAT Line, the Great Lakes Transit Company.

By Exam. GRAY:

Q. Does that mean the Minnesota-Atlantic?
A. Minnesota-Atlantic, yes. I beg your pardon.

By Mr. EISEN:

Q. Did the T. J. McCarthy Steamship Company issue or participate in any charter in 1939?
A. No.
Q. When did the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company first file tariffs?
A. This spring.
Q. This spring?
A. Yes, sir.
Q. Has any traffic, any automobile traffic, regardless of origin or destination, moved under rates published in those tariffs?
A. No.
Q. So those tariffs have never been used?
A. Never been used.
Q. Am I correct in my statement that in your activities for the Detroit & Cleveland Navigation Company you were only in the position of solicitor?
A. That's right.
Q. When you solicit automobiles for movement on the lakes, do you solicit to move by Detroit & Cleveland Navigation Company?
44 A. Yes.
Q. You don't solicit to move via T. J. McCarthy Steamship Company nor the Automotive Trades Steamship Company?
A. No.
Q. The T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company therefore never held themselves out to the public, as we understand it, to carry their automobiles?
A. No.
Q. And you still do not?
A. Still do not.
Q. You have had no indications, have you, that the D. & C. would not renew your charter next year?

A. They were offered an option to renew the charter on one of the boats for this year—for next year, but they declined to take an option.

Q. They declined to take an option or they declined to take it at this time of the year?

A. They declined to take the option to renew the charter next year, in the spring of this year, we were discussing.

Q. Did they ever renew the charter previous to February of the year involved?

A. Yes; they did.

Q. When?

A. What year?

45 Q. When.

A. I am not clear as to the year but they have indicated in the month of January that they would——

Q. It was either the month of January or February?

A. Yes.

Q. But never before that?

A. No.

Q. And you have no indications as to whether or not they will renew in January or February of 1942 for the year 1942?

A. No, sir.

Q. If the D. & C. does exercise its option and if we assume the Commission should grant the right you are here seeking, what vessels would you operate?

A. I should operate the "George W. Ingalls."

Q. Even if the D. & C. exercises the option?

A. They have no option after this year.

Q. But you couldn't exercise the "Mead" and you couldn't exercise the "Tremaine?"

A. No.

Q. So that both the D. & C. and the T. J. McCarthy Steamships would then operate between the same ports, carry the same traffic, all predicated on the same past operations which were conducted by the D. & C. Navigation Company?

A. It is not the T. J. McCarthy or the Automotive Trades Steamship Company.

46 Q. You mean it would be a new company that would operate?

A. That is possible—not a new company, I beg your pardon. But there is no charter or no option to renew on this "George W. Ingalls." She is going to be operated by somebody, it might even be the Nicholson Universal Steamship Company, I don't know; so it would be open to charter to whoever would want to operate, or we could operate if we are given rights.

Q. You mean if you are not given rights those boats would be chartered to someone who has the rights for automobiles?

A. That is what they are fitted out for.

Q. And if you do secure the rights, you will organize a new company and operate those very same vessels as a separate and distinct carrier?

A. No; I didn't say that.

Q. Well, what will you do?

A. I don't know what I will do.

Q. One other thing, you spoke about preseason and postseason insurance on vessels operated before or after the normal closing of the season. Who secures them that?

A. The D. & C. Navigation Company.

Q. I don't have a copy of the application, Mr. McCarthy. I wonder if you would mind telling me what percentage of the stock you own in T. J. McCarthy Steamship Company and in the Automotive Trades Steamship Company.

Mr. FOSTER. I don't think that is material, your Honor,
47 the percentage of stock this witness owns.

Mr. EISEN. Well, it is in the application.

Mr. FOSTER. It is not in the application.

Mr. EISEN. Well, I think the Commission would like to know it.

Mr. FOSTER. I don't see where it has any materiality whatever.

Exam. GRAY. The applications both state that the applicants are under common control. I think the record should show who exercises that control.

Mr. FOSTER. I think he can be asked whether another common carrier does but when you get into the percentage of the individuals who own it, I think it is getting beyond the scope.

Mr. EISEN. Mr. Examiner, if an individual operates two carrier corporations you have just a corporate veil there which should be brushed aside in a proceeding such as this.

Exam. GRAY. Well, the witness may answer or not, as he sees proper, but whether he answers or not, I want to know who has the common control.

The WITNESS. T. J. McCarthy personally owns 85 percent of the stock in the T. J. McCarthy Steamship Company and 80 percent of the stock in the Automotive Trades Steamship Company.

Exam. GRAY. That is the common control which was re-
48 ferred to in the applications?

The WITNESS. Yes, sir.

Mr. EISEN. That is all I have, Mr. Examiner.

Mr. ELDRED. No questions.

Exam. GRAY. Mr. Sullivan?

Mr. SULLIVAN. None for me.

Redirect examination by Mr. FOSTER:

Q. Mr. MCCARTHY, this insurance which is paid for by the Detroit & Cleveland Navigation Company during the season covers both the owner and the charterer?

A. Owner and charterer; yes.

Q. Did you ever make application, Mr. McCarthy, to be included in the Lake Erie Tariff Bureau?

A. Yes; I did.

Q. And to whom did you make that application?

A. To L. W. Patterson, agent for Lake Erie Tariff Bureau.

Q. When did you make that application?

A. It was early in February or late in January.

Q. It was prior to filing your own tariffs?

A. Prior to filing our own tariffs; yes.

By Mr. ELDRED:

Q. That is 1941?

A. 1941; yes.

By Mr. FOSTER:

Q. And were you permitted to participate in the Lake Erie Tariff Bureau?

A. No; they declined to let me participate.

49 Q. Now, the Detroit & Cleveland Navigation Company during 1939 and 1940 have operated ships owned by itself?

A. Yes.

Q. Over these identical routes?

A. Yes.

Q. So their application for grandfather rights does not rest upon the operation of the Tremaine, Mead and Ingalls?

Mr. EISEN. I object; this witness does not know. The D. & C. will establish, and I think the Commission's files will definitely establish that it does. That is something for the Commission to determine.

Exam. GRAY. The objection is sustained.

By Mr. FOSTER:

Q. But they have used and operated the vessels wholly owned by them in the transportation of automobiles between these very same ports?

A. They have.

Q. Now, as a matter of actual practice, Mr. McCarthy, who has scheduled and dispatched and figured out and directed the operation of these automobile boats as to where they would go and when they would go and which vessel would go where?

A. The agent of the D. & C. Navigation Company and myself.

Q. What was the situation with regard to as and when they would go out in the spring on their first trips?

A. When to have the boats ready to go out?

Q. Yes.

50 A. That was my decision. It was my—I never could get an exact date that they wanted to go but they always wanted the boats ready when it was time to go, but we would have to depend on the weather and ice and so forth, but they would never give me a specific date when they wanted the boat ready to go into operation.

Q. And whose decision was it as to when the vessel was actually to sail?

A. That was the D. & C. Navigation Company.

Q. And did they always consult and advise with you in that respect?

A. They always consulted and advised with me in that respect.

Q. Ever since you have had this arrangement with them the other traffic agents of the D. & C. have been advised and consulted with you as to scheduling and sailing of these vessels?

A. Yes; whoever was in charge of that work. It wasn't always the same man, in the past 10 years. They always consulted with me, where we would go, whether we would go to this port or that port. The decision was up to them, but I helped them work it out.

Mr. FOSTER. I think that's all.

Mr. EISEN. I have one question on a new matter raised by Mr. Foster.

51 Re-cross-examination by Mr. EISEN:

Q. You testified, Mr. McCarthy, that the Lake Erie Tariff Bureau declined to permit you to become a party to their tariff?

A. That's right.

Q. Was it indicated to you that the reason was they didn't consider you a common carrier?

A. No.

Q. What was their reason?

A. That the Nicholson Universal said they would withdraw from the tariff if I was included in.

Q. You or any other non-common carrier?

A. No. Just me.

By Exam. GRAY:

Q. Mr. McCarthy, you have testified that all your vessels have been refitted for the carriage of automobiles?

A. That's right.

Q. I take it from that that they are not suitable for carrying bulk cargoes.

A. No. Not without some reconverting of them back to their original condition.

Exam. GRAY. That's all. Any further questions of Mr. McCarthy?

Mr. STRICKROOT. I would like to ask one.

By Mr. STRICKROOT:

Q. On your Steamers "Meade" and "Tremaine" you will
52 handle package freight, rubber and steel; that has been handled by the Cadillac Cartage Marine Forwarding Division?

A. I don't know. I have never seen the bills of lading on the Marine freight.

Q. If the Cadillac Cartage Company offer you a hundred tons of merchandise and a couple of hundred tons of steel from Cleveland to Detroit could you handle it today?

A. No; I couldn't handle it today.

Q. If you receive this common carrier permit would you take up any vessel to carry it?

Mr. FOSTER. I think that would depend on the scope of the permit.

The WITNESS. I think our application was only for automobiles, as I understand it.

Mr. EISEN. I think the question presupposes that the Commission will grant rights for that.

Mr. STRICKROOT. I understand a common carrier handles everything.

Exam. GRAY. Yes; that is a proper question.

The WITNESS. On the present published tariff rates?

By Mr. STRICKROOT:

Q. If the Cadillac Cartage Company Marine Forwarding Division offered you a hundred tons or more of merchandise and a couple of hundred tons of steel a day from Cleveland to Detroit, or a hundred tons of rubber a day from Buffalo to Detroit,
53 and you received a common carrier permit, would you be in a position to handle it?

A. If the rates were satisfactory; yes, sir.

Q. You have no rates published at present on them?

A. Just the port-to-port rates.

Q. On merchandise?

A. On automobiles.

Q. Just automobiles?

A. Yes.

Mr. STRICKROOT. That's all.

Exam. GRAY. That is all, Mr. McCarthy. We will have a recess for 10 minutes.

(A short recess was taken.)

Exam. GRAY. All right.

Mr. FOSTER. Mr. Eisen will be back in a few minutes.

I have about two or three questions, Mr. Examiner, I would like to ask Mr. McCarthy.

Exam. GRAY. Very well.

Redirect examination by Mr. FOSTER:

Q. Mr. McCarthy, what was the approximate cost of converting the "Tremaine" and "Ingalls" into automobile boats?

A. Cost to—$400,000 apiece.

Q. And would you explain briefly just what was done in order to convert them into automobile boats?

A. It was necessary to remove the cargo bulkheads and
54 strengthen where the bulkheads came out, put in deck beams, center stanchions for two additional decks, which gave us three decks under cover and the top deck; planked it over, putting the floors on the deck on the top of the boats, putting two elevators in the boat that takes them from the top down to the lower hold for loading and unloading the vessel, and equipping the vessel with tie-down cables in the method of tieing down as required by the insurance during the early spring and the late fall season to protect the cars on deck from going overboard, and cementing and straightening up the water bottom—or the tank top, as they call it, which had usually been more or less battered up.

Q. And what means do you use for lowering the cars into the lower deck?

A. The two elevators which are installed.

Q. Do you have any idea what it would cost to convert these vessels back into conventional bulk carriers?

A. I haven't had an estimate on it but it would be quite expensive to put them back into bulk carriers again, the same as they were when we took them over; that is, putting in bulkheads and so forth.

Q. Where does the T. J. McCarthy Steamship Company maintain its offices?

A. In one of the D. & C. office buildings on the rear of 419 West Woodridge Street.

55 Q. On the Detroit dock?

A. On the D. & C. Detroit dock.

Q. And does it rent this space from the Detroit & Cleveland Navigation Company?

A. It does.

Q. What sign do you have out over the office of the T. J. McCarthy Steamship Company?

A. Just T. J. McCarthy Steamship Company, D. & C. Navigation Company, T. J. McCarthy, William J. Hoffman.

Q. That sign was put up when?

A. 1936 or 1937.

Q. And that was put up with the consent of the Detroit & Cleveland Navigation Company?

A. With the consent of the Detroit & Cleveland Navigation Company.

Mr. FOSTER. I think that's all.

Exam. GRAY. Mr. McCarthy, do you or the McCarthy Steamship Company solicit entirely automobiles for the D. & C. Company?

The WITNESS. Automobiles only, D. & C. Navigation Company.

Exam. GRAY. Are you the only solicitor of automobiles for the company?

The WITNESS. My organization. We have about eight men in the organization. None of the D. & C. solicitors solicit automobiles because I have the exclusive contract for the T. J. McCarthy Steamship Company for the solicitation of new auto-
56 mobiles.

Exam. GRAY. And does the other applicant company, the Automotive Trades, have the same kind of agreement?

The WITNESS. No; it is just the T. J. McCarthy Steamship, but we use the same boats, it is the same stockholders and so forth.

Exam. GRAY. All right.

By Mr. FOSTER:

Q. Just one other question. What do you figure the additional life of these boats to be?

A. How much longer?

Q. Yes.

A. Well, they are more than 40 years old now, I think they are in pretty good shape as long as you keep them up. Oh, it is indefinite, 10, 15, 25 years. As long as the vessel is maintained. In fresh water you have a condition that doesn't pertain in the salt water. The usual life in salt water is around 20 years and there are vessels of iron or steel on the Great Lakes that are 60 years old. And that is about when they started to make iron vessels, so we don't know how much longer they will live.

Re-cross-examination by Mr. EISEN:

Q. Do you consider yourself, Mr. McCarthy, part and parcel of the D. & C. Navigation Company?

A. In the solicitation of automobiles, I am a hundred per cent soliciting for D. & C. Navigation Company and do not
57 solicit for T. J. McCarthy Steamship Company under my agreement with the D. & C.

Q. Do you advertise yourself as part of the D. & C. Navigation Company?

A. I sign my letters "D. & C. Navigation Company, T. J. McCarthy, Automobile Division."

The advertising that we purchase and buy in our solicitation reads "Automobile Division, D. & C. Navigation Company."

Q. Is this a correct copy of advertising that is gotten out by the D. & C. Navigation Company with respect to its automobile division [indicating]?

A. No, I think I got this up myself.

Q. You got that up yourself?

A. Yes.

Q. And that is a blotter, is it not, advertising the Detroit & Cleveland Navigation Company?

A. That's right.

Q. And showing in connection therewith that T. J. McCarthy is manager?

A. Yes, sir.

Q. But the only holding out is the holding out of the Detroit & Cleveland Navigation Company?

A. I would say so. That blotter will indicate it.

Mr. EISEN. May that blotter be identified as an exhibit in this proceeding, if the Examiner please?

58 Exam. GRAY. Yes. I will identify that and receive that as Applicant's Exhibit No. 1.

(Exhibit No. 1, Witness McCarthy, received in evidence.)

By Mr. FOSTER:

Q. Is this the same blotter that was being used prior to the time that the contract was made between the T. J. McCarthy Steamship Company and you as an individual? Have you continued to use that same blotter since that time?

A. Yes.

Q. You as an individual now have no relations with the D. & C. and have not since 1937. Is that true?

A. The relationship has been between T. J. McCarthy Steamship and D. & C. Navigation Company.

Q. And this blotter is a carry-over from the earlier blotter?

A. That's right.

Q. And did not take into consideration the change which was made in the contract in 1937 when it was changed from an individual contract to a company contract. Is that right?

A. I think that is right.

By Mr. EISEN:

Q. Isn't it a fact, though, Mr. McCarthy, that you are still distributing these blotters in that form?

A. No, we are not distributing that kind any more, for no good reason except we have got a new one.

Q. In what way is the new one different from this one?

A. I don't know. I think it is prettier.

59 Q. And does it still show the name of T. J. McCarthy as manager?

A. Yes.

Q. And it still shows Detroit & Cleveland Navigation Company with you?

A. Yes.

Q. Do you have any advertising gotten out by T. J. McCarthy or T. J. McCarthy Steamship Company or Detroit & Cleveland Navigation Company that is any different, from the standpoint we are speaking of now, from this blotter? That is, shows D. & C. as the carrying line and T. J. McCarthy, individual, as manager of the automobile division?

A. Yes. It is strictly D. & C. Navigation Company.

Q. So this would be representative?

A. Yes.

Q. Of all your advertisements?

A. Yes, sir.

Mr. EISEN. That is all.

Mr. FOSTER. That is all.

Mr. EISEN. Mr. Examiner, at this time may we request a lunch recess while Mr. McCarthy is still on the stand?

Exam. GRAY. I have no objection. Very well. We will recess until 1 o'clock.

(Whereupon, at 12 o'clock noon a recess was taken until 1 o'clock p. m.)

60 AFTERNOON SESSION—1 P. M.

Exam. GRAY. We will be in session now. Off the record.

(Discussion off the record.)

Mr. FOSTER. I want to state for the purpose of the record, Mr. Examiner, that these cases, being the first cases that were set involving the Great Lakes, that the matter was discussed with the Director of the Bureau and it being an original application and for permanent authority as a common carrier, it was suggested that at the hearing not only the testimony as to the previous operations which would sustain a grandfather application be offered, but that the testimony also as to public convenience and necessity

for the operation also be gone into, and I want to say at this time that we prepared to offer such proof and we would like at this time to offer that proof with the idea of later, if necessary, filing these amended exhibits, not saying that we are not entitled, and leaving that question to later be decided by the Commission, as to whether we are not entitled at this time to go ahead and make our complete showing for a certificate as common carrier.

Mr. EISEN. Mr. Examiner, in all fairness to the Director of the Bureau, his assistants and the staffs, I should like to state that I also had a conference with the gentleman and any statements he made to Mr. Foster were in the light of all three applica-
61 tions pending, because when I discussed the matter with him there was nothing said about the two cases here, but there was quite a bit said with respect to the two subsequent cases, dockets, and in all fairness to the Bureau, I don't think that Mr. Foster's statement should remain on the record unchallenged, and so far as submitting testimony today is concerned, I think Mr. Foster was put on notice with respect to previous decisions of the Commission, the federal courts and the Supreme Court of the United States, with respect to identical features here involved, and the protestants have a perfect right to rely on those decisions and should not be prejudiced thereby.

I think the facts you have stated, the opportunity you have given the applicants, fully protects them in all respects.

They have pleadings, and Mr. Foster as an attorney at law knows you cannot go beyond the pleadings. If the pleadings are to be modified in a subsequent hearing, then that subsequent hearing is the time for the testimony.

The applicant has an opportunity to proceed with the issues and the protestants have come here today prepared to rebut the testimony and submit their own testimony with respect only to that issue.

Now, if the applicant is to be permitted to go beyond the scope of this petition, then the other parties have not had their proper day in court because they are entirely taken by
62 surprise, all without any due or just cause.

Exam. GRAY. Well, then, do I understand, Mr. Foster, that you prefer not to amend the application and offer evidence at an adjourned hearing on that phase of the case?

Mr. FOSTER. Mr. Examiner, we have gone to considerable expense and are prepared now to offer that and we would like now to offer that proof with the idea of a later amendment. We have these witnesses here, and I cannot see as a practical matter why procedure along that line would in any way prejudice anybody.

Mr. SULLIVAN. Well, Exhibit B is not on file.

Mr. EISEN. It definitely does, your Honor, because we are not prepared. If we knew that public convenience and necessity witnesses would be heard, we would have appropriate witnesses to counteract that testimony.

Now if Mr. Foster proceeds with his grandfather case there will be disposition of the grandfather case. If he desires later to proceed with the public convenience and necessity case, we would come prepared to meet it.

Exam. GRAY. An adjourned hearing could be held.

Mr. FOSTER. Could that be held at Detroit?

Exam. GRAY. It could be held at Detroit, or Washington.

Mr. EISEN. The grandfather application would stand on its own merits and the public convenience and necessity would stand on its own merits.

63 Exam. GRAY. It would be part of this proceeding.

Mr. EISEN. You say you are ruling now that if a subsequent petition is filed it may be consolidated with this case without having an opportunity for a motion and argument, or, that a joint hearing on public convenience and necessity matter will come on as though it were a new application?

Exam. GRAY. It is my understanding we will go forward as far as we can here today on the grandfather application and, at the adjourned hearing, consider the amended part.

Mr. EISEN. As a new application?

Exam. GRAY. As an amendment to the present application.

Mr. EISEN. Well, it seems to me, Mr. Examiner, that your basic theory is correct with the exception that either the applicant has grandfather rights or it is a new operator. They are both inconsistent and it seems each would have to be arrived at independently. The Commission would have to find first of all whether the applicant has grandfather rights.

If it has grandfather rights there is no need to go into the new application.

If it hasn't grandfather rights, then it goes into the new application, but each one has to stand on its own feet, but we are prepared to proceed with the grandfather application today and I think that should be heard with respect to our closing proof with respect to the grandfather application.

64 Exam. GRAY. Well, there is no intention on my part to prevent you from doing that.

Mr. EISEN. I understand that, Mr. Examiner. I understand that fully.

Exam. GRAY. The protestants definitely are opposed to the receipt of any evidence at this time on the public convenience and necessity case.

Mr. FOSTER. Do I understand the Examiner's ruling that it will not be received?

Exam. GRAY. I will so rule, Mr. Foster.

Mr. FOSTER. And will you have the record show the request that Exhibit B be filed with respect to that application?

Exam. GRAY. You are making that request?

Mr. FOSTER. Yes.

Exam. GRAY. Yes.

Mr. SULLIVAN. Mr. Examiner, much of what you said about the conference during the lunch hour did not get on this record. That is, the reporter did not take it.

Exam. GRAY. No; I understand that. I think the record shows sufficiently now.

Mr. EISEN. Off the record.

(Discussion off the record.)

Mr. FOSTER. Will you read my statement?

(Record read.)

Mr. CARPENTER. Mr. Examiner, I would like to have the record show that the docket shows only an application filed on form BWC 2. The application makes application under the grandfather clause.

The notice and order of the Commission assigning this matter for hearing only refer to the application that was so filed.

Now, when they have a new service, new operation, why, they so state in their order assigning the application for hearing.

Furthermore, the parties served here were not the individual carriers, that is, the individual carriers or individual competitors that are operating on the Great Lakes were not served with notice of this hearing, and I believe that is one requirement when a new service application is filed.

Mr. FOSTER. They were served.

Mr. EISEN. The applicant has to notify the public of the institution of a new service if the application is approved and I don't think the Commission intends to waive that requirement in connection with the new application that Mr. Foster will file. Otherwise the hearing will be faulty.

Mr. FOSTER. This matter is entirely new, Mr. Examiner, and we have made our motion and we also would like to reserve the right to request, say within 5 days, the permission to file the exhibit and to request a further hearing; so we would like for
66 this hearing here to stand adjourned, in view of the Examiner's ruling on our offer to tender proof at this time as to the public convenience and necessity.

Mr. EISEN. Mr. Examiner, the hearing may stand adjourned as to the public convenience and necessity, which was never as-

signed for hearing, but I object to any adjournment on the grandfather case.

Exam. GRAY. The Examiner is not going to adjourn the hearing at this moment.

Mr. EISEN. I understand that.

Exam. GRAY. At the conclusion of all testimony in respect to the application as it stands, these hearings will be adjourned.

Mr. EISEN. Am I correct that no testimony will be received at the further hearing with respect to the grandfather case?

Exam. GRAY. That would be my understanding of it.

Now, Mr. Foster, you may if you care to, suggest when you want the hearing, and where.

Mr. FOSTER. We would like it at Detroit about three weeks from now, around the 1st of October.

Exam. GRAY. Well, you may make that request when you file the application, if you decide to file the amended application.

Now, does everyone understand the disposition of that matter?

67 Has the examination of Mr. McCarthy been concluded?

Mr. EISEN. Except for one motion.

I would like to make an alternate motion, that all of the testimony he adduced with respect to public convenience and necessity be physically stricken from the record; or that in the alternative, if it is deemed more convenient to the Commission, that the Commission disregard that testimony in the disposition of the grandfather case.

Exam. GRAY. Well, your motion will be on the record.

Mr. FOSTER. In view of the ruling, Mr. Examiner, the applicant has nothing further to offer in these other cases, and I assume that all of the same parties are interested in the case of the Nicholson Transit Company.

Now, we were going to make a motion and I discussed it with Mr. Eisen and Mr. Hewitt, on the testimony of Mr. Brennan of the Chrysler Corporation and Mr. Allen of the Hudson Motor Car Company on the question of convenience and necessity as offered in the McCarthy and Nicholson, that it be applicable in the Nicholson Transit case as it affects the Great Lakes.

Now, they are anxious to go back to Detroit tonight and I understand all the parties are interested also in the Nicholson Transit application.

Mr. EISEN. No; I think you are wrong.

Mr. FOSTER. At least everyone who might appear in this case is interested in it.

68 Mr. EISEN. I think you are wrong.

Mr. FOSTER. Those who are not interested, it shouldn't make any difference to them in any event, and I should at this

time like the opportunity of offering Mr. Brennan's and Mr. Allen's testimony on the transit case.

Exam. GRAY. Well, we haven't got into that case.

Mr. FOSTER. No; we haven't, but I don't see any reason why we couldn't go ahead with that and save Mr. Brennan and Mr. Allen having to wait over here, because they are both busy men and anxious to get back to Detroit; and if the interested parties object to that procedure, object to them testifying out of order, I don't presume the Examiner can permit it, but if there is no objection we could go ahead with it at this time.

Now, the Nicholson Transit Company filed in connection with their automobile operation to Duluth.

Certainly in that case it is clear that the question of public convenience and necessity is an essential issue.

Now, if the various other interested parties do not wish to agree that we can go ahead on this basis, I can see how the Examiner could not force them to do it.

Mr. ELDRED. Mr. Examiner, I don't like to keep anyone here longer than necessary, but I am afraid it is going to prejudice us too much, not knowing what issue is going to be involved in
69 the other case. I think we ought to clean this case up first.

I have had this experience so many times where we have gotten witnesses out of order and we have gotten into difficulties.

Exam. GRAY. Well, Mr. Eldred, I am not prepared to suspend this case at this time and open other proceedings. That matter may be handled by stipulation, Mr. Foster, at the adjourned hearing. That is a suggestion. You might be able to stipulate with the other counsel.

Mr. FOSTER. Well, I will ask the gentlemen who are representing here now if they have any objection to stipulating that at the adjourned hearing in the Automotive and McCarthy case, that we can go into the public convenience and necessity of the Nicholson Transit case.

Mr. EISEN. Mr. Examiner, that puts me definitely on the spot.

Exam. GRAY. I didn't mean that they should stipulate now, Mr. Foster, because obviously they haven't heard the testimony.

Mr. FOSTER. I mean stipulate that it can be taken at that time. How they can be prejudiced by agreeing it can be taken at that time if we are not able to complete this case and put it on this afternoon, I don't see. I don't see how they could be prejudiced by doing that.

Mr. EISEN. Off the record, Mr. Foster.

(Discussion off the record.)

Exam. GRAY. Very well. We will proceed with the dis-
70 position.

Mr. Foster, have you any further evidence on behalf of the applicants?

Mr. FOSTER. No; Mr. Examiner.

Exam. GRAY. Mr. Eisen?

Mr. EISEN. Yes. I call MR. Arnold.

J. M. ARNOLD, being first duly sworn, testified as follows:

Direct examination by Mr. EISEN:

Q. Please state you name and address.

A. My name is J. M. Arnold, the address is Detroit, Michigan.

Q. What are your present business affiliations?

A. I am general freight agent of the Detroit & Cleveland Navigation Company.

Q. Do you have charge over the files of the Detroit & Cleveland Navigation Company with respect to its applications for rights, its billing documents, and matters of that sort?

A. I do.

Q. Has the Detroit & Cleveland Navigation Company filed an application with this Commission in accordance with the requirements of the Transportation Act of 1940?

A. They have.

Q. Seeking grandfather rights in the transportation of automobiles?

A. They have.

71 Q. Upon what specific operations as set forth in your application are those rights predicated?

A. Predicated on the assumption that the Automotive Trades and also the T. J. McCarthy Steamship Company would be part and parcel of it.

Q. In other words, your application specifically and definitely sets forth that your grandfather rights are predicated on the operations of the Detroit & Cleveland Navigation Company, the T. J. McCarthy Steamship Company, and the Automotive Service Activities?

A. That is correct.

Q. Is your grandfather application supported by documentary evidence in accordance with the requirements of the Act?

A. It is.

Q. Among the documents set forth or contained in that application you have specimen transportation documents indicating the transportation of automobiles under Detroit & Cleveland Navigation Company billings which are actually carried on vessels operated by the Detroit & Cleveland Navigation Company bearing the names of the Meade and Tremaine and Ingalls?

A. I have.

Q. Is there any way of identifying in the record just approximately where those documents are contained in the application so that reference thereto can be made in the Commission's files?

72 A. They can be readily found in there. They are about middle way down under bill BC 1187 dated July 28, 1939, trip No. 47. The Steamer "Mead" covers cars, Chevrolet cars, and it is the Detroit & Cleveland Navigation Company as shown in there, and no one else; destination is beyond Buffalo.

Q. Can you give us one or two more bills?

A. Yes; I can give you BC 3446 on November 19, 1939, on the Steamer "Tremaine" on trip No. 60. That also shows no one other than the Detroit & Cleveland Navigation Company.

Q. Do those transportation documents contained in there in support of the application shows additional shipments which moved on the vessels named here today?

A. Oh, yes; there are more here. These are just samples that symbolize what is in the application.

Q. Is there attached to that application a facsimile of the charter arrangement between the Detroit & Cleveland Navigation Company and the T. J. McCarthy Steamship Company for the Steamer "George W. Mead?"

A. There is.

Q. Have you made photostatic copies thereof?

A. I have.

Q. And does that photostatic copy contain on the top of the page thereto renewals of the charter arrangement bringing them down to the present time?

A. That's right.

73 Mr. EISEN. I am going to ask the protestants to bear with me and not ask for copies of these [producing papers]. I would like to offer as Exhibit No. 2, Mr. Examiner, the document just described by the witness which consists first of all of the top sheet of the letter dated February 5, 1941, from James McMillan, secretary of the Detroit & Cleveland Navigation Company, to T. J. McCarthy Steamship Company; directly underneath, letter of January 19, 1940, addressed by the general manager of the Detroit & Cleveland Navigation Company to T. J. McCarthy Steamship Company; directly underneath, letter of January 27, 1939, addressed by the president of the Detroit & Cleveland Navigation Company to T. J. McCarthy Steamship Company; and directly thereunder letter dated March 20, 1937, signed by William K. Muir, of the Detroit & Cleveland Navigation Company addressed to T. J. McCarthy Steamship Company; and then

directly thereunder the agreement and charter itself which consists of 11 sheets.

(Exhibit No. 2, Witness Arnold, marked for identification.)

Exam. GRAY. The papers just identified will be received——

Mr. FOSTER. Mr. Examiner, I would just like to ask the witness a couple of questions before you make a ruling on that.

Exam. GRAY. Very well.

By Mr. FOSTER:

74 Q. Mr. Arnold, how long have you been connected with the Detroit & Cleveland Navigation Company?

A. Since July 1st this year.

Q. And you have no knowledge of the fact that this charter here has been amended in several instances?

A. The only information I have is the information I got from our people on that.

Q. And you didn't ask them whether or not it had been amended as to the licensed personnel who are on 10 months' salary under the union contract—you aren't provided with the amendments to this charter?

A. Whatever is there is what we have.

Mr. FOSTER. Mr. McCarthy testified it had been amended in several instances.

Mr. EISEN. I object to that. I read the charter and Mr. McCarthy agreed to it.

Mr. FOSTER. Not on that. This charter has been amended. Unless this witness can say here this exhibit here is of his personal knowledge—because I know it is not——

Mr. EISEN. Mr. Examiner, I asked the previous witness if he was in charge of the files and he read from the application. I asked him if he had a copy of the charter or had copies of the charter attached to the application, and he said it was. This is a copy of the charter that was in the Commission's files and that was filed with the Commission.

75 If Mr. Foster has any information or knowledge to the contrary, he can submit it. This is what has been submitted to the Commission under oath by Mr. Arnold's predecessors. Mr. Arnold has succeeded to those duties, and he is the man in complete charge of those files. And he has submitted a facsimile of what is in that company's application.

Mr. FOSTER. If you are offering it for that purpose, if you are offering it with the idea that that is what is in the application, I have no objection to it, but if you are offering it as the present existing agreement between the two companies, unless this witness can testify that it is the agreement, I object to it.

Mr. EISEN. Mr. Examiner, I asked him if he had reproduced an exact copy of what was attached to the application, and this is it, and we offer this as part of the application.

Mr. FOSTER. I have no objection.

Exam. GRAY. Very well. The documents as described are identified as Exhibit No. 2.

By Mr. EISEN:

Q. Now, Mr. Arnold, do you have any knowledge of any changes or amendments in this charter?

A. I do not.

Q. As far as you know, this is the existing charter?

A. As far as I know.

Q. Have you checked the agreement and charter party between the Automotive Trades and the Detroit & Cleveland Navi-
76 gation Company against this agreement or charter party which has been identified as Exhibit No. 2?

A. Yes, sir.

Q. Would you say it is identically the same?

A. Same thing.

Q. Word for word, with the exception of the names of the steamers?

A. That is right.

Q. And therefore it could be used as representative of all of the charter parties covered by this application?

A. As far as I know.

Q. Does the Detroit & Cleveland Navigation Company operate the vessels which are the subject matter of this agreement and charter any differently than it operates the vessels which it owns itself?

A. No, sir.

Q. Does the Detroit & Cleveland Navigation Company maintain unlimited and unrestricted control over vessels which are the subject matter here, all during the period of navigation?

A. That's right.

Q. Does that company permit anyone to dictate to it with respect to the operation of those vessels?

A. No, sir.

Q. Do you know whether or not T. J. McCarthy Steamship Company or the Automotive Trades Steamship Company
77 is any exception to that clause, or the statement you have just made?

A. Not as far as I know.

Q. In other words, they can not dictate to the D. & C. with respect to the operation of those vessels during the period of open navigation?

A. That is my understanding.

Q. Have you made facsimiles of transportation documents that appear in your company's files indicating the manner in which automobiles are carried by the Detroit & Cleveland Navigation Company in the boats of the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company which it operates, or its own?

A. Well, we have photostatic copies here of bills of lading for the years 1938—just one moment, please—'37, '38, '39, '40, and '41. There are two copies of each year [producing papers].

Q. Two copies of the same loading?

A. Yes, sir. On the back of that shows the steamer on which they moved.

Q. You don't mean two copies of the same lading, you mean one lading for each year?

A. That's right. And on the back you will find the name of the steamer on which they were handled.

Q. Is there anything on those documents to indicate transportation by anyone other than the Detroit & Cleveland
78 Navigation Company?

A. There is not.

Mr. FOSTER. Are you going to offer these exhibits?

Mr. EISEN. Yes.

Mr. FOSTER. Let the exhibits speak for themselves, then.

Mr. EISEN. I am offering that as Exhibit No. 3.

Mr. FOSTER. Have you copies of them?

Mr. EISEN. No; I do not.

Mr. FOSTER. Will you provide copies?

The WITNESS. Certainly.

Mr. EISEN. Mr. McCarthy has copies of all of them but we will go to the bother of making additional photostats if you so desire.

Exam. GRAY. The other side are entitled to that.

Mr. EISEN. I will furnish copies.

Mr. FOSTER. You say Mr. McCarthy has copies of them?

Mr. EISEN. I say I will furnish them.

The WITNESS. I will make a notation.

(Discussion off the record.)

Cross-examination by Mr. FOSTER:

Q. Mr. Arnold, you say that you assumed your duties with the Company on July 1 of this year?

A. That is correct.

Q. Well, what are your duties?
79 A. General freight agent.

Q. What do your duties consist of?

A. I have direct charge of all traffic, freight, making up, telegraphing, everything pertaining to freight traffic, traffic department.

Q. And the dispatching of all boats?

A. I have nothing to do with the dispatching of boats.

Q. You have nothing to do with the dispatching of boats?

A. No, sir.

Q. Have you ever seen the solicitation agreement between Mr. McCarthy and the Detroit & Cleveland Navigation Company?

A. I did, yes.

Q. Did you ever see the original of the charter of which this is a photostat?

A. No; I just saw that.

Q. Just saw the photostat?

A. That's right—of this application here, grandfather application.

Q. You don't know of your knowledge of any subsequent amendments to this charter?

A. All I know is what is in this application.

Q. All you know is the photostat there offered as an exhibit is in the application?

A. That is what I said before.

Q. In this application you also submit the operations of
80 your own ships, do you not?

A. Yes.

Q. And they operate over these same routes?

A. Pretty generally.

Q. The fact has not occurred to you that if you do not recharter Mr. McCarthy's boats your application for grandfather rights would be denied?

Mr. EISEN. I object.

Mr. FOSTER. He said he would rely on that.

Mr. EISEN. I object and the record will bear me out, as the basis for the grandfather application but the reference in the application to operations of T. J. McCarthy, the Automotive Trades and the Detroit & Cleveland Navigation is made?

The WITNESS. That's right.

By Mr. FOSTER:

Q. And in the application it was absolutely necessary for you to do that, was it not, in connection with any chartered boats?

A. That may be a question of law, I don't know.

Q. Well, look at page 4 of the application, paragraph 3, description of equipment.

A. The exhibits, you mean?

Q. No; it is in the main part of your application, on page 4 of your application, description of equipment.

A. Yes.

Q. It was necessary for you to state the boats that you had
81 under charter, was it not?

A. That may be a question of law.

Q. I am asking you if the application did not require you to state it. You have the application before you?

A. We named the boats and named the companies in there.

Q. Yes. And the application provided that you must name them.

Mr. EISEN. I am going to object to whether it requires that you must. There are blanks there.

Mr. SULLIVAN. There are blanks there for the purpose.

The WITNESS. They were filled out in accordance with that.

By Mr. FOSTER:

Q. You have no knowledge now of whether you will charter those boats next year or not?

A. We have a contract for 1942.

Q. You have a contract?

A. For two of those boats, yes. We are to have the option of using those boats next year.

Q. But you have no idea of whether you are going to exercise that option?

A. I am not a medium. I didn't say that.

Q. That would be for the executives to decide?

A. I would probably be consulted on that too.

Q. You would probably be consulted on it?

A. For my recommendations.

82 Q. While in the event you didn't charter these boats, what would be the basis of your protest of Mr. McCarthy operating them over the same routes?

Mr. EISEN. Mr. Examiner, I am going to object to anything outside the scope of the direct examination. I have no objection to Mr. Foster recalling my witness if he so desires as his own, but this is cross-examination and I am going to object to any questions which go beyond the scope of the direct testimony.

Exam. GRAY. I will have to sustain that.

Mr. FOSTER. He has stated he was using the charter of these boats as the basis of his application.

Mr. EISEN. He didn't state that.

Mr. FOSTER. Will you go back, Mr. Reporter, and read that?

Mr. EISEN. The first question I asked Mr. Arnold, I think, is the one Mr. Foster wants you to read, or one of the first.

The Reporter [reading]:

"Q. Has the Detroit & Cleveland Navigation Company filed an application with this Commission in accordance with the requirements of the Transportation Act of 1940?

"A. They have.

"Q. Seeking grandfather rights in the transportation of automobiles?

"A. They have.

83 "Q. Upon what specific operations as set forth in your application are those rights predicated?

"A. Predicated on the assumption that the Automotive Trades and also the T. J. McCarthy Steamship Company would be part and parcel of it.

"Q. In other words, your application specifically and definitely, sets forth that your grandfather rights are predicated on the operations of the Detroit & Cleveland Navigation Company and the Automotive Service Activities?.

"A. That is correct."

Mr. EISEN. My objection is that it is beyond the scope of the direct examination.

Mr. FOSTER. Mr. Examiner, he said his right was predicated upon him operating not only his own ships but those of the T. J. McCarthy and Automotive Trades.

Now, that is what the witness testified to, regardless of what Mr. Eisen says. He has opened that question. He has offered these bills of lading and he reads from his application. He has opened up that question.

Mr. EISEN. The question was: "What does your application show?" and it shows his company is seeking grandfather rights on the operations of three separate entities' vessels.

Mr. FOSTER. I think he has opened up the question of what he is going to do if he doesn't have these boats.

84 Exam. GRAY. I think that is entirely speculative, Mr. Foster. We are not concerned here with what the applicant is or is not going to do in 1942 as much as what he has been doing in the past.

Mr. EISEN. And the main issue Mr. Foster is discussing is whether the Commission is going to grant two grandfather rights.

Mr. FOSTER. Mr. Examiner, I want to ask Mr. Arnold this question: You have set forth in your application the operation of your own ships over precisely these same routes and in handling these same commodities. Is that not right?

Mr. EISEN. Refer to the application and check it.

The WITNESS. Whatever the application calls for.

By Mr. FOSTER:

Q. You have the application before you?

A. Yes, but it would require considerable reading to read it all.

Q. You have it there before you and have been referring to it before, and I ask you to look at the application and answer the question as to whether or not this application does not also contain in it facts as to the operation of your own ships between Detroit and Cleveland and Detroit and Buffalo.

A. It will have to.

Mr. EISEN. Separate and distinct.

By Mr. FOSTER:

Q. Separate and distinct from the other boats.

85 A. That's right.

Q. And it is on the basis of that—

Mr. EISEN. Wait a minute. Let him find it first.

The WITNESS (examining papers). Yes. It is referred to down here [indicating]. It is shown by various exhibits attached to the application.

By Mr. FOSTER:

Q. What is the exhibit number?

A. Exhibit A-11-A.

Q. What is that?

A. Description of regular routes showing regular routes, Detroit, Cleveland, Cleveland to Detroit, Detroit to Buffalo, Buffalo to Detroit.

By Mr. EISEN:

Q. Mr. Arnold, do you understand the question, what in the application sets forth matters that pertain wholly and exclusively to the matters handled by your own boats as distinguished from the boats of the other two companies?

A. It is all more or less tied together.

Q. You can not find anything in there that sets forth information applying wholly to your own company's boats?

A. They are tied up together.

Exam. GRAY. At this moment I think these bills of lading have not been received in the record. You have offered them as an exhibit?

Mr. EISEN. I really ought to apologize. Mr. Arnold did

86 describe them in detail but we went off on a tangent. Perhaps after Mr. Foster completes his testimony—I don't want to interrupt him.

By Mr. Foster:

Q. Mr. Arnold, turn to page 4 of your application, paragraph 3, description of equipment, subparagraph A.

A. Subparagraph A?

Q. Yes. A, number of vessels.

A. I am just trying to get the same page you have got there.

Q. It is page 4.

A. I have got page 4. Are you counting this as one page and this as one page [indicating]?

Q. No, page No. 4.

Mr. Eisen. On the top, under your clip.

Mr. Sullivan. That will be the back of the second sheet.

The Witness. Page 4. I have got it here, yes.

By Mr. Foster:

Q. Description of equipment?

A. Yes.

Q. Will you read the description of equipment?

A. Owned, chartered, leased from others; 10. Is that what you mean, predecessors?

Q. Read the whole thing starting with A.

Mr. Eisen. Mr. Examiner, must we have the printed form read into the record?

Mr. Foster. I want to show he is relying on his own vessels, not just these vessels.

87 Mr. Eisen. We concede the application asks the number of vessels but that wasn't the question. The question was: "What in there shows the activities to Detroit and Cleveland separately from the activities of the other two lines."

Now, the number of vessels does not show that.

Mr. Foster. I am going to break it down and show which were his and which were chartered.

Mr. Eldred. What is the purpose of that for this proceeding?

Mr. Foster. The purpose is to show it was not necessary for the D. & C. to rely on that to have grandfather rights. It isn't a question of beating D. & C. out of anything at all. They have both been operating there for years over these same routes.

Mr. Eldred. I don't see that that has any bearing.

Mr. Foster. I want to develop that they operated their own vessels over precisely the same routes as these chartered ships.

Mr. Eisen. Well, I move that you have incorporated by reference in this record the application of the Detroit & Cleveland Navigation Company for grandfather rights.

Mr. Foster. We have to have copies of it, then.

Mr. Eisen. I said incorporated by reference.

Mr. FOSTER. Well, we have to have copies.

Mr. EISEN. No.

88 Mr. FOSTER. Mr. Examiner, I would like to know whether I am going to be permitted to go into the question as contained in their application and show the boats they operated and show among those the boats which were owned by them and which were chartered.

Now they have brought up that question and Mr. Eisen has attempted to interpret that the D. & C.'s whole right to grandfather rights will rest on those ships.

Exam. GRAY. That is perhaps an erroneous conclusion; that is one of the factors the D. & C. is relying on, not the sole factor.

Now, I don't want too much of that extraneous application being brought in here.

Mr. EISEN. Mr. Examiner, in defense of myself I think I refuted that assertion three or four times by having my question read. I do not place any such implication and I think it is entirely unfair for Mr. Foster to ask that question again and again. I asked Mr. Arnold if the claim of the Detroit & Cleveland Navigation Company was predicated on the activities of all three companies. Now, I haven't drawn any conclusion.

Mr. FOSTER. The witness having answered it, I submit it is only proper that we be permitted to go into that question as to how they were operated and where they were operated, without this continual objection from Mr. Eisen.

89 All I want to do is to clarify that the 10 ships, on the operation of which they are basing their rights, were operated, so it may not later be argued in a brief that by the operation of these ships they could not have any grandfather rights. That is the point I want to develop.

Mr. EISEN. May I inquire whether we are now trying the D. & C. application?

Mr. FOSTER. No; we are not.

Mr. EISEN. Then why go into it?

Mr. FOSTER. Because you are claiming the D. & C. have no rights because we are operating these ships.

Mr. EISEN. No. I said the question was whether two lines can have grandfather rights for the same operation. It is all up to the Commission. The D. & C. has rights, the T. J. McCarthy has them, and whether the McCarthy has them to the exclusion of the D. & C. is all that I said.

Exam. GRAY. Well, Mr. Foster, we had better not go into the application of the D. & C.

Mr. FOSTER. Mr. Examiner, this is the request of the D. & C. for operation. They come in and say, "No, we are relying on those ships for our grandfather rights."

Certainly to preclude us going into the basis of that operation, if we are doing that there is no use of going any further on this, if that is the ruling.

Exam. GRAY. No. Mr. McCarthy has testified that all
90 his vessels were chartered to the D. & C. Navigation Company.

Mr. FOSTER. That's right.

Exam. GRAY. Well, now, that is established in the record and there is no dispute about that. There is no dispute that the D. & C. Navigation Company is operating and that it has filed its application. I think it is unnecessarily prolonging the matter, going into it.

Mr. FOSTER. I should have been through half an hour ago with it. There are only about three questions I want to ask.

Mr. EISEN. Make them relevant, and I won't object.

Mr. FOSTER. I take it the Examiner is ruling that I can not ask the general traffic manager of the protestant the basis under which it operated the chartered boats of the T. J. McCarthy and the Automotive Steamship.

Mr. EISEN. I will interpose to the Examiner that the firm ruling of law is that the written document speaks for itself. We have put it in, whereas, it was the applicant's duty to put it in, but we have been endeavoring to give the Commission everything in our power to give a clear cut picture.

The written document is in the record and it speaks for itself.

Exam. GRAY. That is as I understand it the basis on which the vessels are operating.

Mr. FOSTER. The witness has admitted he has not put in
91 the whole charter.

Mr. EISEN. Mr. Examiner, I think Mr. Foster ought at least to keep his remarks confined to facts.

Mr. FOSTER. He said he knows nothing about any amendments to the charter.

Mr. EISEN. As far as he knows that is the charter. That is all he said.

Mr FOSTER. Mr. Eisen, you brought it out yourself that this is the charter attached to the exhibit and the witness testifies he has no knowledge of the charter.

Mr. SULLIVAN. That is not admitting.

Mr. EISEN. I asked him if he knew of any amendments and I asked him whether it was the present charter. He said, "As far as I know, it is."

Why do you state he said it is not the present charter?

Mr. FOSTER. I didn't say that.

Mr. EISEN. Well, have the reporter go back.

Mr. FOSTER. You say you are offering it for that purpose. If you are offering it for any other purpose, we object to it.

Mr. EISEN. I am offering it for the purpose therein. The Commission can put it to any purpose it desires. It was the province of the applicant in the first instance to put it in.

Mr. FOSTER. It was not.

92 Mr. EISEN. I think it was, and I am doing it for the benefit of the Commission. If you have any knowledge of anything contradicting it, you are at perfect liberty to put it in and nobody is precluding you from doing it.

Mr. FOSTER. Will you go back, Mr. Reporter, and read the question that I asked the Examiner?

Mr. EISEN. I would like the record to show that Mr. Eisen is not the only one that asks the reporter to go back and read the record.

Mr. FOSTER. I think the record will show that, Mr. Eisen.

If the Examiner please, Mr. Eisen opened up this question by having Mr. Arnold read right from the application itself the information about these chartered boats and about the operation of these chartered boats. Now he has opened up that on direct examination of his own witness on reading more from the application.

Now all I want to do is to pursue that question and show on what basis those boats were operated and to show also that they were operating their own boats and over the same routes, and that their application will in no way rise or fall upon the operation of these chartered boats.

That is what I want to develop from this witness' testimony in view of the fact that the record as it now stands can very well leave the inference that the Commission might find itself in

93 the position of granting two companies grandfather rights on the operation of the same ship.

That is the point I want to clarify.

Exam. GRAY. Well, wouldn't that be in connection with the D. & C. application?

Mr. FOSTER. No, because he is using as a basis for that application the fact that he chartered and used these boats and has endeavored to leave the impression, whether intentionally or otherwise, that when the application does come up he might find himself in the position of someone else having been granted the permit and finding himself out on a long limb.

That is the point I want to correct. That was opened up by Mr. Eisen on direct. All I am asking of the Examiner is to clarify the situation. I don't want to be left in the position that the Examiner rules Mr. Eisen can use only so much of that as he

sees fit and have you say that is all, you can not pursue that question any further.

Exam. GRAY. Well, at this time we will take a short recess.

(A short recess was taken.)

Exam. GRAY. Now, Mr. Foster, it is the Examiner's understanding that the McCarthy vessels are being operated by the D. & C. Navigation Company, and the charter has been introduced in the record. I think that shows the manner in which the applicant's vessels are being operated.

94 Mr. FOSTER. Mr. Examiner, you missed my point.

Exam. GRAY. Very likely.

Mr. FOSTER. I want to show that the application which they have referred to here and which they have read from and which they have used up to the point where they desire to use it, sets forth that operation. And I also want to show that it also shows these other exhibits, that they would have these grandfather rights, and are in no wise dependent under that application on the operation of these McCarthy boats.

Mr. ELDRED. Mr. Examiner, I don't see how we can determine whether the D. & C. are entitled to grandfather rights in this proceeding. That is not in issue here. It is only the application of these two applicants in issue here and it has nothing to do with the D. & C. rights.

Now, whether they are going to rise and fall on these two boats is going to be determined in separate proceedings.

Mr. EISEN. He says the witness answered in reading from the application. I don't recall the witness reading from the application in answer to any of my questions.

Exam. GRAY. We are not getting very far.

I will sustain your objection, Mr. Eisen.

Mr. FOSTER. As I understand it, I can not pursue the questioning of this witness any further in connection with their operation of the chartered boats and their own boats. Am I precluded

95 from going into that part of the question which has been opened up by Mr. Eisen on direct examination of this witness?

If that is the ruling, I am perfectly satisfied, but I do want the record to show that that is the ruling.

Mr. EISEN. Six or seven times I have heard Mr. Foster say I have opened something up.

I have reiterated and reiterated my question to the witness. I asked if the application showed on what it was predicated. He didn't read anything from the application. I don't know what Mr. Foster is talking about. My objection was the cross should be confined to the scope of the direct. I didn't object to any cross

examination on the scope of the direct. My objection went to the cross examination beyond the scope of the direct.

Exam. GRAY. That is what I am sustaining, the objection to the cross examination beyond the scope of the direct examination.

Mr. FOSTER. Then does the Examiner rule that, it having been opened up by the witness on direct examination, the question as to the chartering and the operation of these three chartered boats and the fact that the application of the Detroit & Cleveland Navigation Company was predicated on the operation of these ships, that we are not permitted to go ahead and show that they were
96 operating these ships, along with their own ships, and over the same routes, and the basis on which they were operating those ships?

I mean if that is the ruling of the Examiner as to the scope of the direct and the scope of how far we can go, I am quite content with it, with an exception. But I do want the record perfectly clear on it.

Mr. ELDRED. Mr. Examiner, I don't think you have made any such ruling at all.

Mr. EISEN. I am not going to answer that, Mr. Examiner.

Mr. FOSTER. I didn't ask you for an answer.

Mr. EISEN. I am addressing my remarks to the Examiner. The record speaks for itself.

You have already made the ruling. Anyone can read the record and see the effect of your ruling. I don't see why you should be pinned down to it.

Mr. ELDRED. If there is any further question to ask, let him ask it.

Mr. FOSTER. We will go back to the charter, which I thought was clarified once before.

By Mr. FOSTER:

Q. You don't know of your own knowledge, Mr. Arnold, whether the exhibit that has been offered is the present existing charter between Detroit & Cleveland Navigation Company and the T. J. McCarthy Steamship Company?

A. I told you before it was not——

Q. Will you answer the question?

A. I said what was in this application for grandfather
97 rights, that is that same charter. This is the third time I have said it.

Mr. FOSTER. Will you read the question?

(Question read.)

Mr. FOSTER. That question can be answered yes or no, Mr. Examiner.

Exam. GRAY. Yes, the answer was not responsive.

Mr. FOSTER. I ask that the question be answered yes or no.

The WITNESS. Will you read the question again?

(Question re-read.)

A. To the best of my knowledge and belief; it is.

Mr. FOSTER. I ask that the answer be stricken as not being responsive.

Mr. EISEN. That is silly. The answer is responsive.

Exam. GRAY. He said he believes it is.

Mr. FOSTER. No, he didn't say it; he said to the best of his knowledge.

Exam. GRAY. As far as he knows it is. That is what you meant, Mr. Arnold?

The WITNESS. Yes, sir; it is; to the best of my knowledge, it is.

Exam. GRAY. I will accept that as a proper answer.

By Mr. FOSTER:

Q. In addition to the vessels that were under charter from the Automotive Trades and the T. J. McCarthy
98 Steamship Company, did the Detroit & Cleveland Navigation Company operate its own vessels over these same routes and between these same ports during 1939 and 1940?

A. They probably did.

Q. Do you know whether or not they did?

A. To the best of my knowledge and belief they did.

Q. How many vessels did they operate?

A. I couldn't tell you that today.

Q. Does the application show that?

A. Whatever is in the application would show it, yes. It shows right here in the application what we operate.

Q. Will you turn to page 4 and tell us how many vessels it did so operate?

A. Do you want me to read from description of equipment?

Q. That's right.

Mr. SULLIVAN. Now that question was "so operate." That word "so" ties it up with ownership. Take 3 chartered ships from 10, and you have 7 left. Explain those. Let us get somewhere.

Mr. FOSTER. Thank you.

By Mr. FOSTER:

Q. How many did you operate?

A. This says "total number of vessels in commission and operated by applicant (or predecessor in interest) as a common or contract carrier on January 1, 1940, including vessels owned, chartered, or leased from others, 10."

99 "Number of owned vessels operated by applicant (or predecessor in interest), 6."

Now, for No. 2:

"Number of vessels under charter to applicant (or predecessor in interest), 4."

"Paragraph B, number of vessels owned by applicant (or predecessor in interest) and under charter to others on January 1, 1940, none."

Do you want me to read any further?

Mr. CARPENTER. Read the whole application.

By Mr. FOSTER:

Q. That's all right. Who are those four vessels chartered from?

Mr. ELDRED. Oh, I object to that, Mr. Examiner. That has no bearing whatsoever, whether they are all chartered or who they were chartered from, in these proceedings. We know there are three chartered from this applicant. What this company is doing with other vessels has no bearing here at all.

Exam. GRAY. That is beyond the scope of the applicant's operations, Mr. Foster.

Mr. FOSTER. I want to show it is owned by a fully owned subsidiary and is operated on the same routes.

Exam. GRAY. That is very pertinent as to the D. & C. Navigation Company but their application is not under consideration now.

Mr. FOSTER. But they are protesting ours and are making the claim that their rights under the 1940 Transportation Act are predicated upon the operation of our ships as part of their whole unit and I think I have a right to show that vessels owned by that company and its wholly owned subsidiaries, acting over precisely the same routes—that the Commission is not going to be in the position of granting two companies certificates on the operation of the same ships.

100

Now, that is the purpose of this line of testimony.

Exam. GRAY. Very well. The witness may answer.

The WITNESS. What is the question?

Mr. SULLIVAN. The last question was "from whom do you charter that fourth ship?"

Mr. FOSTER. That's right.

The WITNESS. Is that what you want to know?

Mr. FOSTER. That's right. That is the last question.

The WITNESS. Mr. Examiner, can I ask a question?

Exam. GRAY. Yes.

The WITNESS. Whose application are we trying here now, the D. & C. or the T. J. McCarthy and the others?

Mr. EISEN. Mr. Arnold, if you know the answer, answer it. If you don't know, say you don't.

The WITNESS. I don't know.

By Mr. FOSTER:

Q. Do you know who owns the Steamer "Fitch?"

A. I do not.

Q. You know that you operate her?

101 A. I have heard of it.

Q. You have been traffic manager since the first of July?

A. That is right.

Q. Now, I ask you a question as to whether or not you know whether you operate that ship. Do you or do you not?

A. I understand to my best knowledge and belief that we do.

Q. Have you seen it at your docks?

A. I have seen it at our docks.

Q. Loading automobiles?

A. I wouldn't say definitely I have seen automobiles being loaded on it.

Q. Have you seen it on your docks?

A. I have seen it on our docks.

Q. And as traffic manager of your company you don't know whether you operate the "Fitch" or not?

A. I understand that we do.

Q. And do you know whether it was so operated in 1939?

A. I do not.

Q. This exhibit that you read from earlier attached to the application, does that throw any light on it?

A. As to the "Fitch?"

Q. Yes. The exhibit that you got the information from about the "Tremaine" and "Ingalls" and "Mead."

A. I don't see it here.

Q. That is the application there (indicating). The

102 exhibits are in the back.

A. Yes, I looked there. Now, what is your question?

Q. Have you any exhibit attached to your application then that shows ownership of the "Fitch"?

A. I find here that the Detroit & Cleveland Steamship own the—or apparently charter the vessel "William F. Fitch," charter it for the season 1941.

Q. That is, you chartered it from the Detroit & Cleveland Steamship Company?

A. I assume we did.

Q. And you know nothing about the ownership of the Detroit & Cleveland Steamship Company?

A. I am in no position to say.

Mr. FOSTER. I think that's all.

Exam. GRAY. Any further cross examination of Mr. Arnold?

Mr. ELDRED. Just one question.

Mr. EISEN. Is that redirect?

Mr. ELDRED. It will be cross examination.

Mr. EISEN. May I break in now to have Mr. Arnold describe Exhibit No. 3?

Exam. GRAY. Yes, please do.

Redirect examination by Mr. EISEN:

Q. Will you please read the dates and any identification marks and then read the vessel under which any automobile transportation covered by the document moved, Mr. Arnold?

103 Mr. SULLIVAN. Why do the documents have to be read into the record?

Mr. EISEN. We offered them as exhibits.

Mr. SULLIVAN. Why does it have to be read off?

Mr. EISEN. Just the docket numbers for identification. The Examiner asked to have that identified.

The WITNESS. The Examiner wishes it to be done. The first shipment moved out of Pontiac, Michigan, shipped by Pontiac Motor Division.

Mr. SULLIVAN. Can't that all be done by documents?

Mr. EISEN. Just read the pro and the date.

The WITNESS. I was just going to show the shipper and show that was July 7, 1937, shipment of automobiles loaded on steamship "Tremaine," trip No 40, 1937.

Exam. GRAY. I would identify these separately. That will be Exhibit 3.

(Exhibit No. 3, Witness Arnold, marked for identification.)

The WITNESS. Shipment of automobiles from the Oldsmobile Division, General Motors Sales Corporation, Lansing, Michigan, July 3, 1937, on pro-B-1900 routed by D. & C. Navigation Company.

I would like to say that the other one is also loaded the same way.

104 Exam. GRAY. That is Exhibit 4?

(Exhibit No. 4, Witness Arnold, marked for identification.)

The WITNESS. Shipment from Flint, Michigan, on November 29, 1938, consigned to Buick Motor Division Sales Corporation, Hornell, New York, routed by D. & C. Navigation Company.

Exam. GRAY. Exhibit 5.

(Exhibit No. 5, Witness Arnold, marked for identification.)

Mr. ELDRED. Just a minute Mr. Examiner. Do I understand that all these bills indicate movements insofar as the Detroit & Cleveland Navigation Company is concerned between Detroit and Buffalo——

The WITNESS. Detroit and Buffalo.

Mr. ELDRED. Detroit and Buffalo.

Mr. EISEN. Any Cleveland in there?

Mr. ELDRED. If there are I think the record ought to show exactly the movement insofar as the D. & C. are concerned at points of destination and origin.

The WITNESS. Well, I might say, going back to the first one, it was dispatched to Mohawk Valley, Utica, routed via D. & C. through Buffalo, Steamer "Tremaine," trip No. 40, 1937.

The second one was consigned to Specter Genesee Motor Sales Company, Syracuse, New York, routed via D. & C. through Buffalo on the Steamer "Tremaine" Trip No. 39, 1937.

105 The third one was consigned by Buick Motor Division, G. M. Sales Corporation to Hornell, New York, routed by D. & C. through Buffalo, Steamer "Tremaine," Trip No. 17, 1938.

The next one was from Detroit, Michigan, in September, 1940, No. B-19151 consigned to Ludlow Motor Company, Buffalo, New York, routed via D. & C. on the Steamer "Tremaine," Trip 53, 1940.

Exam. GRAY. That one is Exhibit 6.

(Exhibit No. 6, Witness Arnold, marked for identification.)

The WITNESS. The next one was from Detroit, Michigan, on September 6, 1940, routed via Detroit & Cleveland Navigation Company, consigned to George C. Reinoehl, Buffalo, routed via D. & C. on pro-B-19138 on the Steamer "Tremaine," Trip No. 53, 1940.

Exam. GRAY. Exhibit 7.

(Exhibit No. 7, Witness Arnold, marked for identification.)

The WITNESS. That was September 6, 1940, for the Chrysler Corporation.

From the Chrysler Corporation, June 18, 1941, via the D. & C. Navigation Company, to Rudolph Motors Company, Inc., Buffalo, New York, on pro-B-19634, on the Steamship "Mead," Trip 40, 1941.

Exam. GRAY. That one is Exhibit 8.

106 (Exhibit No. 8, Witness Arnold, marked for identification.)

The WITNESS. From the Chrysler Corporation, Detroit, Michigan, June 18, 1941, via Detroit & Cleveland Navigation Company consigned to Burtiss Motor Sales, Inc., Buffalo, on the Steamship "Tremaine," Trip 34, 1941, on pro-B-19686.

Exam. GRAY. Exhibit 9.

(Exhibit No. 9, Witness Arnold, marked for identification.)

The WITNESS. From the Hudson Motor Car Company, Detroit, Michigan, October 23, 1939, to Warren Motors, Buffalo, New York, routed via D. & C. Navigation Company on pro-B-19273 forwarded on the Steamer "Mead," Trip 76, 1939.

Exam. GRAY. Exhibit 10.

(Exhibit No. 10, Witness Arnold, marked for identification.)

Mr. SULLIVAN. This could be introduced in two minutes without taking all this time. We could have a sheaf of 10 exhibits identified and not have to sit here all this time for that stuff.

Re-cross-examination by Mr. ELDRED:

Q. Now, as far as you know, since you have been with the Detroit & Cleveland Navigation Company, has any freight been carried on boats which have been operated by your company under any other bill of lading than that of the Detroit & Cleveland Navigation Company?

107

A. No, sir.

Q. Referring specifically to the three boats under charter from the Automotive Trades Steamship Company, and T. J. McCarthy Steamship Company, has any freight been carried on those boats under any other bill of lading than that of the Detroit & Cleveland Navigation Company?

A. Not to my knowledge.

Q. Now, would you look at the charter, please, sir, copy of it?

A. Which one?

Q. The original charter.

A. That was the "Tremaine."

Q. Yes.

Mr. EISEN. No. That was the "Mead."

The WITNESS. We just took that as a symbol of all of them.

By Mr. ELDRED:

Q. Will you please just point out for the record so we may know the paragraph there, part of the paragraph, which sets forth who shall pay for the expenses in connection with the operation of the boat when it is operated in the revenue service?

A. Paragraph 3.

Q. Does the charter provide that you shall have the exclusive use of the boat during the entire navigation season?

108

A. As I understand it, yes.

Mr. FOSTER. I submit that the charter is the best evidence on that, Mr. Examiner. To ask the witness what some exhibit that is in the record provides——

Mr. ELDRED. Unfortunately, I would like to know something about it. I don't happen to have a copy of it.

Mr. FOSTER. There is a copy right in front of you.

Mr. ELDRED. That is Mr. Eisen's. I would like to ask a couple of questions, if I am out of order, Mr. Examiner.

Exam. GRAY. Proceed.

Mr. ELDRED. Where was I?

(Question and answer read.)

Mr. FOSTER. Mr. Examiner, I object to that question because the charter speaks for itself. To ask the witness what the charter provides asks for a conclusion both as to law and as to fact, Mr. Examiner. The document speaks for itself and I move that that answer be stricken.

Exam. GRAY. Well, the document speaks for itself all right. I will not strike the answer.

Mr. ELDRED. You will not. That is all I have.

By Mr. FOSTER:

Q. What provision of the charter do you base that answer on, Mr. Arnold?

A. The charter itself.

Q. What provision? You have it there as an exhibit, you referred to it.

109 A. The charter speaks for itself, I said.

Mr. SULLIVAN. Now, you speak for the charter.

By Mr. FOSTER:

Q. You speak for the charter.

A. Do you want me to sit here and read this whole charter?

Q. No, you said you understood that, but I want to know why you understand that.

A. Because the charter speaks for itself, you said. I take the same position.

Mr. FOSTER. Mr. Examiner, that is where we get. It is only a conclusion, what the charter provides, and he hasn't the slightest idea what the terms of that charter are.

The WITNESS. Mr. Examiner, this charter here charters that boat to us for our exclusive use during the period of navigation when we have it under charter. I was asked a general question on what this charter provides for. I attempted to answer that question to the best of my ability. I don't know why I should go all over this here and try to point out some specific point in the charter that might change the answer. I will have to read that whole charter to understand what the purpose of this leading question is.

By Mr. FOSTER:

Q. Mr. Arnold, you say you have the whole charter and you say you understand it does give you the exclusive right.

A. That's right.

Q. Now, you have testified from the exhibit, and I am
110 asking you whether that is your general idea, whether you have any knowledge, or on what you base your answer.

A. Based on my understanding of what I understand the charter means. I have chartered vessels for about 10 years; a charter

means you charter the vessel, it is under your jurisdiction. You make that charter for a trip, you make that charter for a month, you make that charter for a year.

Mr. FOSTER. I guess that is all.

Exam. GRAY. If no one wants to examine you further, you are excused.

(Witness excused.)

Mr. EISEN. May I offer those exhibits if they have not been received as yet?

Exam. GRAY. Yes, Mr. Eisen. They have been identified, and are received as 3 to 10, inclusive.

(Exhibits Nos. 3 to 10, inclusive, Witness Arnold, received in evidence.)

Mr. FOSTER. Now, Mr. Examiner, I cannot see where they have any materiality whatever on the T. J. McCarthy Steamship Company's application. I cannot see where these 10 exhibits with the explanation of what they were, and the photostats, have any bearing whatever material to Mr. McCarthy's application. I ask that the exhibits be not received because they have not been identified, they are photostats of something, and as to where
111. the thing came from, as to whether those automobiles moved on those particular boats or anything has not been identified. This witness says that he came the 1st of July. I submit that those exhibits have not been properly identified, and I object to their being received in evidence.

Exam. GRAY. The record will show your objection, Mr. Foster, and I then will overrule it.

Mr. FOSTER. Exception.

Mr. EISEN. I have no further witnesses.

Exam. GRAY. Mr. Sullivan, do you have any presentation in these cases?

Mr. SULLIVAN. No, sir.

Exam. GRAY. Is there anything further to come before the Commission in the application of T. J. McCarthy Company and the Automotive Trades Steamship Company?

Mr. EISEN. Mr. Examiner, if the case is going to be closed here and not briefed, I would like to direct attention to certain decisions appropos of the present proceeding.

Exam. GRAY. There is no inclination to preclude anyone from filing briefs, and briefs will be due within 30 days of the close of the hearing. I presume that will be determined by the adjourned hearing.

Mr. FOSTER. I would like to make the motion that the hearing be adjourned to Detroit with the right on behalf of the com-
112 pany to file the Exhibit B and have testimony in regard to the convenience and necessity feature of it.

Exam. GRAY. Well, the application for that hearing is received and will be entertained.

Mr. EISEN. Do I understand, Mr. Examiner, that this proceeding with respect to the grandfather application is closed? Is that right?

Exam. GRAY. I am not going to close it; no. I will adjourn the hearing until the conclusion.

Mr. EISEN. In the grandfather case?

Exam. GRAY. I will adjourn the hearing today; yes.

Mr. EISEN. Well, before you adjourn then, I would just like to direct the attention of the record to the decision of this Commission in 47 MC–335, Dixie-Ohio Express Company, common carrier application.

Mr. ELDRED. May I inquire of Mr. Foster what application and amendment he proposes to file to the present application?

Mr. FOSTER. The reason we are asking for an adjournment is because we want time to consider that matter, so I cannot answer that question precisely now. We started on the theory that we were going to be permitted to go into that phase of it in this present case.

Mr. ELDRED. Well, I was going to ask you—you will have to wait until the application is filed, I suppose. That is the only thing you can do.

I desire to call attention of the Commission, however, 113 that this relationship between these two companies and the Detroit & Cleveland Navigation Company existed some time prior to the grandfather date and there is nothing in this relationship and it is not an interim relationship. I mean, this is solely a grandfather relationship all the way through. It seems to me that if there is going to be any application filed it would have to be of necessity a new service application. It could not be an amendment to your grandfather application.

Mr. FOSTER. That is on the basis that the Commission ultimately rules that part 3 is going to be treated the same way as the Motor Carrier Act.

Mr. ELDRED. No. The law is very distinct in this respect.

Mr. FOSTER. I mean as to who has— -

Mr. ELDRED. I am not trying to say who has the right. I am only trying to find out that your relationship is a grandfather relationship. It cannot be anything else. It will have to be decided on that. Now, if you are filing an application to show public convenience and necessity, it must be a new application, a new service application, and will have to be filed on BW 3–3.

Exam. GRAY. Any further remarks?

(No response.)

Exam. GRAY. These hearings are adjourned until a future
114 date.

(Whereupon, at 2:30 o'clock p. m. the consolidated hearings were adjourned as above noted.)

Exhibit No. 2 for Identification Only

114–A DETROIT AND CLEVELAND NAVIGATION COMPANY

DETROIT, *February 5, 1941.*

R: Stmr. "George W. Mead."

Mr. T. J. MCCARTHY,
President T. J. McCarthy Steamship Co.,
Detroit, Michigan.

DEAR SIR: This will serve as formal notification that the Detroit and Cleveland Navigation Company exercises the option of renewing the charter of the steamer "George W. Mead", for the season of 1941 in accordance with terms of contract dated February 18, 1937 and amendments thereto.

Yours truly,

DETROIT AND CLEVELAND NAVIGATION COMPANY,
JAMES MCMILLAN, *Secretary.*

J. Mc. M./N.
cc W. R. E. Marshall.

114–B DETROIT AND CLEVELAND NAVIGATION COMPANY

DETROIT, *January 19, 1940.*

T. J. MCCARTHY STEAMSHIP CO.,
Detroit, Michigan.

(Attention: Mr. T. J. McCarthy, President.)

GENTLEMEN: This will serve as formal notification that the Detroit and Cleveland Navigation Company exercises the option of renewing the charter of the steamer "Geo. W. Mead" for the season of 1940 in accordance with terms of contract dated February 18, 1937, and amendments thereto.

Yours truly,

DETROIT AND CLEVELAND NAVIGATION COMPANY,
General Manager.

CLP: f,
cc W. R. E. Marshall.

114–C DETROIT, *January 27, 1939.*

Stmr. "Geo. W. Mead"

T. J. McCARTHY STEAMSHIP CO.,
Detroit, Michigan.

(Attention: Mr. T. J. McCarthy, President.)

GENTLEMEN: This will serve as formal notification that the Detroit & Cleveland Navigation Company exercises the option of renewing charter of the Steamer "Geo. W. Mead" for the season of 1939 in accordance with the terms of the contract dated February 18, 1937, with the understanding that certain amendments discussed in our Mr. Perkins office on January 15, last, will be added to the charter agreement covering operation during the 1939 season.

Yours truly,

DETROIT & CLEVELAND NAVIGATION COMPANY,
J. I. McMILLAN, *President.*

J. Mc. M./N.,
cc-W. R. E. Marshall.

114–D DETROIT, *March 20, 1937.*

In Re Charter on Steamer "George W. Mead"

T. J. McCARTHY STEAMSHIP COMPANY,
210 Wayne Street, Detroit, Michigan.
Attention: Mr. T. J. McCarthy.

GENTLEMEN: Following discussions between you and the writer, it is our understanding that paragraph 6 of the Charter may be so amended as to provide that the Consolidated Water Power & Paper Company, assignee of Newago Tug Line, Inc., may likewise be named as an assured under the policies provided for in that paragraph, and that it may be further amended so as to provide that the loss payable clause or clauses of the policies shall provide that the loss or lossess shall be paid to the T. J. McCarthy Steamship Company, Owner, the Consolidated Water Power & Paper Company, Mortgagee, and the Detroit & Cleveland Navigation Company, Charterer, as their respective interests may appear.

It is our further understanding that all other terms and provisions of the said Charter, including those provisions of paragraph 6 not specifically amended by this letter, are to remain unchanged and in full force and effect.

Would thank you to accept this amendment at the bottom of this letter and return it in triplicate for our files.

There is also enclosed form of receipt which it is suggested you obtain in making your payments under the mortgage on the "Mead." We are asking that you obtain this receipt so that our records may be complete from month to month.

Yours very truly,

DETROIT & CLEVELAND NAVIGATION COMPANY,
By (Sgd.) WM. K. MUIR.

Accepted;

T. J. MCCARTHY STEAMSHIP COMPANY,
By (Sgd.) T. J. MCCARTHY, *President.*

114–E *Agreement and charter*

This agreement and chapter concluded this 18th day of February A. D. 1937 between T. J. McCarthy Steamship Company, a corporation organized under the laws of the State of Michigan, having its principal office in the City of Detroit, Michigan (hereinafter called the Owner), sole owner of the Steamer "George W. Meade," and Detroit and Cleveland Navigation Company, a corporation duly organized under the laws of the State of Michigan, with its principal office in the City of Detroit, Michigan (hereinafter called the Charterer); witnesseth:

The Owner does hereby charter and let unto the Charterer the Steamer "George W. Meade" for the lake season of navigation of 1937 for operation, transportation and carrying of cargoes on the Great Lakes, their connecting and tributary waters.

(1) The Owner agrees that at the commencement of the term of this Charter the said Steamer "George W. Meade" will be tight, staunch and strong, well and sufficiently tackled, appareled, furnished, outfitted and equipped and in every respect seaworthy and in good running order and consideration and fit for the service for which she is chartered hereunder.

It is further agreed that the Owner will pay all of the expense of fit-out, including all expenses which may be necessary to procure the approval of the vessel by the United States Local Inspectors of Steam Vessels and their certificate for the vessel for the coming season, and will do any and all things necessary to have the vessel classed or approved so that the insurance to be placed by the Charterer as hereinafter provided may be obtained. The
114–F Owner likewise agrees to stand all expenses of whatever nature to connection with establishing and marking the loadline of said vessel in the event it is necessary under the laws of the United States or any other regulatory body or commission that this be done during the currency of this Charter.

(2) The Charterer agrees that the said Steamer "George W. Meade" during the term of this Charter shall be officered and manned as required by the United States rules and regulations governing same and that the said Steamer shall be operated in all respects in a seamanlike manner and in accordance with the laws, regulations and rules pertaining to the navigation of vessels on the Great Lakes.

(3) The Charterer agrees that beginning with date of delivery of the said Steamer "George W. Meade" to it at Detroit, Michigan, and during the term of this Charter, it will pay all costs of maintenance and operation of said vessel, including, without limiting the generality of the foregoing, such expenses as wages of licensed officers and of the crew, cost of fuel, oils, grease, and engineer's supplies and all supplies necessary or proper for the steward's department, supplies for the mate's department, towing ex-
114-G penses, repairs and upkeep of said vessels and equipment, machinery, boilers and appurtenances other than those which may be recoverable under the policies of insurance provided for in Article Sixth hereof which shall be taken out by the Charterer.

(4) It is further agreed that prior to the commencement of operation of said vessel by the said Charterer a full and complete inventory shall be made of all the fuel, stores, appurtenances, furniture and equipment including freight handling equipment aboard and belonging to the said Steamer, said inventory to be made jointly by a designee of the Owner and a designee of the Charterer, and upon completion of said inventory it shall be reduced to writing and signed by the said designees as representatives of the respective parties and the same shall be binding to its extent upon both the Owner and Charterer, and on completion of said Charter Party no claim shall be made for loss of fuel, stores, equipment, furniture or appurtenances unless such fuel, stores, equipment, furniture and appurtenances be noted in said written inventory. The Charterer further agrees that at the expiration of the Charter it will repair, replace or pay the value of any item or items of the foregoing property or its equivalent found to be consumed, missing or damaged in order that the said property shall be as full, complete and in as good condition, ordinary wear and tear excepted, as the said property shall be at the beginning of said Charter.

(5) It is further agreed that prior to the acceptance of said vessel under this Charter by the Charterer the condition
114-H of the ship shall be noted and any visible damage surveyed and included in a written report of survey to be

made jointly by designee acting for the Owner and a designee acting for the Charterer, and upon completion of said survey it shall be reduced to writing and be signed by the representatives of both parties, and the same shall be binding to its extent upon the Owner and Charterer as to the condition of the ship and any visible damage at the time of the execution of this Charter Party.

The Charterer further agrees to permit the Owner of the vessel, through its authorized representatives, to inspect said vessel from time to time for the purpose of ascertaining that she is being maintained by the Charterer in a careful and efficient manner, and Charterer agrees to carry out any reasonable instructions in regard thereto as the Owner of said vessel deems necessary for the proper maintenance and upkeep of said vessel, except that the Owner by such inspection shall not interrupt the service of said vessel.

It is further understood and agreed that, providing the consent of the Owner by first obtained, the Charterer shall have the right to install on said vessel additional equipment and shall also have the right before redelivery of said vessel to the Owner to remove such equipment, or such part thereof as can be removed. The cost of such additional equipment and all expenses of installation and removal thereof shall be paid for by the Charterer which shall also at its own expense make all repairs and replacements as may be necessary in order that the said Steamer "George W. Meade" may be in the same condition as she
114-I was prior to the installation of said additional equipment.

(6) The Charterer agrees that it will procure and pay for all ordinary hull insurance, including fire insurance, also protection and indemnity insurance with Longshoremen's qualifying policy covering the said Steamer "George W. Meade," said policies to be on the current Great Lakes standard forms as applicable to a boat of the type and class of the "George W. Meade," for the season of 1937, each class of insurance to be in the amount ordinarily obtainable on a vessel of the size and class of the Steamer "George W. Meade"; provided, however, the Owner shall pay all excess cost of insurance on said Steamer over and above the so-called dual valuation basis. It is understood that the Owner shall be named as an assured in all of the above policies of insurance and that the loss payable clause of the policies shall provide for payment to T. J. McCarthy Steamship Company, Owner, and Detroit and Cleveland Navigation Company, Charterer. It is understood and agreed, however, that the Charter will indemnify

and save harmless the Owner and Steamer "George W. Meade" of and from any and all claims arising out of the operation of said Steamer of any nature whatsoever not covered by said policies of insurance (except any such as may arise out of or through the action or fault of the Owner); and also that any deductible average payable under the terms of said policies or
114–J otherwise shall be for the account of the Charterer which hereby agrees to pay the same. If the Charterer desires to use said vessel on any trips starting prior to April 15th, 1937, or later than November 30th, 1937, the Charterer agrees to obtain pre-season or extended insurance for said vessel insuring both the Owner and Charter to the same extent as hereinabove provided with respect to insurance during the regular season of navigation, the cost of such pre-season or extended insurance to be paid for by the Charterer.

(7) The Charter agrees to pay as charter hire for said Steamer "George W. Meade" the sum of _____ (_____) for the season of 1937, including the period to April 15th and after November 30th in the vent that the said Charterer should elect to use the said vessel prior to April 15th or later than November 30th, which said charter hire is to be payable as follows: _____ (_____) on delivery of the said vessel to the Charterer, and the balance of _____ (_____) in seven (7) equal installments of _____ (_____) and payable each thirty (30) days thereafter. It is specifically understood and agreed that the said charter hire of _____ (_____) is to be net to the Owner, that there shall not be any deductions therefrom of any sum whatsoever for any expenses arising out of the operation, maintenance, insurance and redelivery of said vessel, and the only expense of any kind whatsoever which the Owner is to bear is such expense as may be necessary to fit out and to place said vessel in
114–K condition to procure and maintain her Steamboat Inspection certificate and her classification certificate.

The above contemplates that the Owner will pay the expenses of any and all structural or other changes, or changes, alterations or betterments to machinery or equipment which may at any time be ordered by the Steamboat Inspection Service or any government agency in pursuance of any present or future laws of the United States, or as may be necessary to maintain and continue her classification. The Owner shall pay all expense of lay-up after redelivery of the vessel to the Owner.

(8) It is understood and agreed, anything to the contrary notwithstanding, that said vessel shall not start upon any voyage

later than the 12th day of December 1937, and that the Charter shall terminate absolutely not later than that date.

(9) Neither the Charterer nor the master of the Steamer shall have any right, power or authority to create, incur or permit to be imposed upon the Steamer any lien whatsoever except for crew's wages and salvage.

The Charterer agrees to carry a properly certified copy of this Charter Party with the ship's papers and on demand to exhibit the same to any person having business with the Steamer which might give rise to any lien thereon other than liens for crew's wages and salvage.

(10) The Charterer agrees that it will not suffer or permit to be continued any lien or encumbrance of any character upon or against the said Steamer which has or might have priority
114-L over the title and interest of the Owner of said Steamer, and said Charterer agrees that it will keep the said Steamer free and clear of all debts, claims and liens whatsoever (except such as may arise by or through the Owner) during the said term, and that upon termination of this Charter, whether by limitation or otherwise, to return said Steamer to said Owner at the port of Detroit, Michigan, in like good order and condition as when taken, ordinary wear and tear excepted, and said Charterer further agrees to fully indemnify and protect said Steamer and its Owner against any and all claims or liens that may be asserted during the term hereof or thereafter through or on account of said charter for the use and operation of said Steamer by said Charterer, its agents or employees.

(11) If at any time after the delivery of said Steamer to the Charterer hereunder the Charterer shall fail to perform any of its duties or obligations or shall violate any of the provisions imposed upon it under this Charter, the Owner may, without prejudice to any other rights which it may have under this Charter, withdraw and retake the said Steamer wherever the same may be found, whether upon the high seas or in port, harbor or other places, and without prior demand and without legal process, and for that purpose may enter upon any dock, pier, or other premises where the said Steamer may be and take possession thereof.

(12) At the termination of this Charter the Charterer agrees to return said Steamer to the Owner at the port of Detroit, Michigan, in the same condition as when she was delivered, reasonable wear and tear excepted; provided that it is expressly
114-M agreed that in the event of a total loss or constructive total loss of said Steamer the Charterer is relieved from the obligation of returning the said vessel to the Owner as herein provided.

(13) The Charterer further agrees that in the event said Steamer shall be used for the transportation of any commodity (other than automobiles) which, because of its inherent nature, causes damage to or depreciation of the vessel, that repairs necessitated or damage or depreciation caused by said service shall be borne and paid for by the Charterer, ordinary wear and tear in such event not being excepted.

(14) The parties hereto further mutually agree that in the event of a total loss and or constructive total loss of said Steamer, charter hire shall terminate upon the date of said total loss or constructive total loss. In the event, however, of a loss other than total loss or constructive total loss, irrespective of the cause of the same or the duration of the delay occasioned thereby, the charter hire shall be paid in full as hereinabove provided.

(15) It is further understood and agreed that in the event of any delay or default in the payment of the charter hire at the times hereinbefore specified the Charterer is to pay interest at the rate of six percent (6%) per annum from the date when said installment was due until the same has been paid. All payments to the Owner and any obligations wherein money is involved shall be expressly understood as requiring payment in American currency or drafts or checks negotiable at par at Detroit, Michigan.

114-N (16) Anything to the contrary notwithstanding, it is expressly agreed that in the event of war, riot, civil commotion, rebellion, insurrection, labor disturbances, or strikes, whether involving the automobile industry or maritime or dock workers, or otherwise, or other conditions beyond the Charterer's control, whereby the obtaining of cargoes for or the operation of said vessel is interrupted, and the same shall continue for a period of ten (10) successive days, the Charterer shall be relieved from the payment of charter hire hereunder for the period of interruption.

(17) In consideration of the entering into of this Charter, the Owner does hereby give and grant to said Charterer the right and option to renew and extend this Charter on the same terms and conditions from season to season for the seasons of navigation of 1938, 1939, 1940, 1941, and 1942, providing that on or before February 1st in the year following a previous year's charter; the Charterer shall notify the Owner by written notice, mailed and addressed to it at 210 Wayne Street, Detroit, Michigan, of its election to exercise its option to renew and extend Charter for the next season. Whereupon, this Charter shall be automatically renewed and extended and be binding and effective between the parties hereto for such ensuing season of navigation.

In witness whereof, the parties hereto have
114–O caused this instrument to be signed by their respective officers hereunto duly authorized, and their respective seals to be hereto affixed, the day and year first above written.

AUTOMOTIVE TRADES STEAMSHIP COMPANY,
By (Sgd.) T. J. MCCARTHY, *Its President.*

DETROIT AND CLEVELAND NAVIGATION COMPANY,
By Sgd.) JAS. R. COULTER, *Its Vice President.*
In the presence of:

(Sgd.) ANGELENE BENSON.
(Sgd.) WM. K. MUIR.

115 Before the Interstate Commerce Commission

Docket No. W–592

APPLICATION OF T. J. MCCARTHY STEAMSHIP COMPANY FOR A CERTIFICATE TO OPERATE AS A COMMON CARRIER IN THE TRANSPORTATION OF PROPERTY BETWEEN PORTS ON THE GREAT LAKES

Docket No. W–729

AUTOMOTIVE TRADES STEAMSHIP COMPANY (APPLICATION TO OPERATE AS A COMMON CARRIER BY WATER)

HOTEL FORT SHELBY,
DETROIT, MICHIGAN, *February 13, 1942.*

Met, pursuant to notice, at 9:30 a. m.

Before J. P. MCGRATH, Examiner.

Appearances: Same as hereinbefore noted and the following additional appearance: Charles E. Lewis, 2828 Union Guardian Building, Detroit, Michigan, appearing for Detriot and Cleveland Navigation Company, protestant.

115B PROCEEDINGS

Exam. MCGRATH. The hearing will come to order, please.

The Interstate Commerce Commission has assigned for further hearing at this time and place dockets Nos. W–592 and W–729, the applications of the T. J. McCarthy Steamship Company and Automotive Trades Steamship Company, respectively, under Section 309 (a) of the Interstate Commerce Act, for authority to

EXHIBIT 3

THIS SHIPPING ORDER

Shipper's Order No. 41160

GRAND

CONTRACT CARRIAGE CO.

At PONTIAC, MICHIGAN

PONTIAC MOTOR DIVISION
of General Motors C

From

PONTIAC MOTOR DIVISION
of General Motors Corporation

Consigned to ORDER of

Destination UTICA State of N.Y. County of

Notify MOHAWK VALLEY MTRS., INC. AFC ORIGINAL 5 Y.

At UTICA State of N.Y. County of

Route CC DAC INVICATION B HOLD AT BUFFALO FOR SURRENDER OF ORIGINAL BILL OF LADING IN RELEASE OF SAME

Delivering Carrier Car Initial Car No.

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*(Subject to Correction)	RATE
	Passenger Motor Vehicles - Automobiles - Complete		
	TYPE		
1	BCA 10500A BODY SHT AU/HD/HB	1[illegible]	1.65
	BCA ADDED AIR TANK SHT B/C/T/DH/DE	5580	0.00
1	BCA ADDED AIR TANK SHT B/C/T/DH/DE	3486	0.00
	2 AT 1[illegible]		
	2 AT 1[illegible]		
	3 1/4 D. Total Weight		
	89		
2	Transportation Charges (If Charges to be Prepaid)		
3	Total Due		
	Additional Charges on U. S. Government Shipments (Except as noted)		

Shipper's Order No.

Marks or Nos.

Kind of Packages

Description of Articles, Special Marks, and Exceptions

Weight

Rate

Charges

continue operations as common carriers by water in existence on January 1st, 1940, and for initial hearing the amended applications of these applicants under Section 309, Paragraphs "a" and "c" of the Act, for authority to continue operations as common carriers by water instituted after January 1st, 1940, and existing February 1st, 1941.

Appearances will be taken only of those who did not enter their appearance at the prior hearing. Tre there any such, and, if so, please indicate whether you have been admitted to practice before the Commission?

Mr. LEWIS. Charles E. Lewis, for the Detroit & Cleveland Navigation Company. I am admitted to practice.

Exam. MCGRATH. What is the disposition of the parties with respect to continuing to hear these two applications on the consolidated record. Is there any objection to that?

116 Mr. FOSTER. There is none so far as we are concerned. We think they are very closely related and that is the way it should be heard.

Mr. EISEN. No objection on my part.

Exam. MCGRATH. All right; applicants may call their first witness.

Mr. FOSTER. You may take the stand, Mr. McCarthy. Mr. McCarthy was previously sworn.

Exam. MCGRATH. All right.

T. J. MCCARTHY, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

Exam. MCGRATH. You were previously sworn, Mr. McCarthy?

A. Yes, sir.

Q. And you are still testifying under oath?

A. Yes, sir.

Mr. FOSTER. At this time, Mr. Examiner, we would like to make an amendment to our original application.

Exam. MCGRATH. In which docket?

Mr. FOSTER. In the Automotive Trades docket. Under article 2 of the application "B," irregular routes, we would like to add the certain irregular routes which were traveled, over which transportation was had in 1936, 1938, and 1939, as will be shown on applicant's exhibit 20, of which everyone has

117 a copy.

Mr. EISEN. Is that confined to Automotive Trades—is that confined to automobiles, may I ask, Mr. Foster?

Mr. FOSTER. No. It is confined to the actual operations of the vessels over these irregular routes during the grandfather period of 1939 and we ask that so the application will conform with the proofs which will be offered.

Mr. EISEN. Just for clarification: Does that application cover general commodities, automobiles, or what? I don't have a copy of it.

Mr. FOSTER. Of the application?

Mr. EISEN. The application.

Mr. FOSTER. It covers specials.

Exam. MCGRATH. Special commodities.

Mr. FOSTER. Primarily automobiles.

Exam. MCGRATH. And contains a statement that exemption is claimed on bulk commodities except when transported with nonexempt commodities. I take it, gentlemen, there is no objection to the amendment proposed?

Mr. ELDRED. Is this on the grandfather or on the interim operation?

Mr. FOSTER. It is on the grandfather.

Mr. ELDRED. I am not going to stand on any technicality because if the man has been doing it he is entitled to it. I am not going to stand on that. I assume that it will be supported
118 by proof.

Mr. SULLIVAN. May I ask if this operation encompassed both exempt and nonexempt upon the same ship at the same time?

Mr. FOSTER. No; it encompassed the general operation of the ship as a tramp vessel on the Great Lakes, getting cargoes where she could get them and transporting them to where she could get them.

Exam. MCGRATH. All right. In the absence of objection that amendment is allowed.

Mr. FOSTER. Now, Mr. Examiner, this case is an adjourned case and I will endeavor not to go over any of the ground that we did in the original hearing any more than is absolutely necessary, although I realize that some of it may be again covered but I will try to not do that.

Q. Mr. McCarthy, how long have you been engaged in the automobile transportation field?

A. 21 years.

Q. And with whom were you first associated?

A. Nicholson Transit Company. First associated with the Tri-State Steamship Company, then later the Nicholson Transit Company.

Q. And will you explain for the record just what connections you have had in that field during these 21 years?

A. With the Tri-State Steamship Company I was their automobile solicitor and operating man and for the Nicholson
119 Transit Company I handled every job they had on the dock from checking cars in, to loading them on the dock and soliciting them from the automobile plants and dealers and later, as the business developed from the original 2 boats, they had 13 at one time with the Nicholson Transit Company. Of course, later I was made the general solicitor of the automobile traffic for the Nicholson Transit Company. The Nicholson Transit Company was later taken over by the Nicholson Universal Steamship and I filled various positions with Nicholson Universal Steamship through the various ownerships, as the company had changed management two or three times and the last time it was sold to Mr. Fred L. Hewitt and my last position with them was their treasurer and general manager.

Q. And when did you leave that company?

A. In 1933.

Mr. EISEN. Just to keep the record straight, you don't mean Fred L. Hewitt; you mean to a corporation, don't you?

The WITNESS. Yes; that is all right. Fred L. Hewitt was the head of the corporation. I think a corporation to be formed is the way the thing was originally sold. I can't answer whether the corporation was ahead of—whether Mr. Hewitt was before the corporation but he represented the corporation, if that will clarify it.

Exam. MCGRATH. And the corporation you have reference to is the Universal Steamship?

120 The WITNESS. Now the Nicholson Universal.

Mr. EISEN. The corporation he has reference to, I think, is the Over Lakes Freight.

The WITNESS. Over Lakes Freight Company, all right.

Exam. MCGRATH. What was that, the predecessor of the Nicholson Universal Steamship Company?

The WITNESS. No; that is a holding company that took over the Nicholson Universal Steamship Company and the Spokane Steamship Company and some of the terminals of the Nicholson Universal.

Exam. MCGRATH. All Great Lakes lines, all Great Lakes operators?

The WITNESS. All Great Lakes operators; yes, sir.

By Mr. FOSTER:

Q. And with what company did you become connected after leaving Nicholson Universal Steamship Company?

A. With the D. & C. Navigation Company.

Q. And how long were you connected with that company, either you or your company?

A. From 1933 until February 4, 1942.

Q. I think there was offered as exhibit 2 in the original record, Mr. McCarthy, what purported to be the charter between the——

Exam. McGRATH. I just want to call attention to the fact that the Commission's record does not contain a copy of exhibit number 2.

Mr. FOSTER. Well, we can provide that.

121 Exam. McGRATH. Sir?

Mr. FOSTER. I say we can provide that and will be glad to do it.

Mr. EISEN. I offered that. I don't understand how it did not get in.

Mr. FOSTER. I think Mr. Arnold was to later send copies.

Mr. EISEN. No; we presented copies. Off the record.

(Discussion outside the record.)

Exam. McGRATH. All right, you may proceed, Mr. Foster.

Mr. FOSTER. Read as far as I go.

(Question read.)

Q. (Continuing.) T. J. McCarthy Steamship Company and the Detroit & Cleveland Navigation Company.

Mr. FOSTER. And, Mr. Examiner, I am going to have in all 20 exhibits. The exhibits 17, 18, 19, and 20 will not be offered through Mr. McCarthy, so that as a matter of convenience I just hand you all of those exhibits now. I also hand the reporter a set.

Exam. McGRATH. Off the record.

(Discussion outside the record.)

Exam. McGRATH. Back on the record.

Mr. FOSTER. Mark these for identification, please, as exhibits 11 to 27, inclusive.

(Exhibits Nos. 11 to 27, inclusive, Witness McCarthy, marked for identification.)

122 By Mr. FOSTER:

Q. Mr. McCarthy, was the exhibit 2, which was the charter on the steamer "Mead," later amended?

A. Yes; it was.

Q. And in writing between the companies?

A. In writing. April 7, 1939.

Q. And was the similar charter on the steamer "T. J. McCarthy," Ex "Morris S. Tremaine," also amended?

A. Yes; it was.

Q. I show you for identification Mr. McCarthy, exhibit 11 and ask you if that is the modification of the charter of the steamer "T. J. McCarthy," Ex "Morris S. Tremaine"?

A. Yes, sir; it is.

Q. I show you exhibit 12 and ask you if that was the modification of the charter dated February 18, 1937, on the steamer "George W. Mead."

A. Yes, sir.

Q. Each of those exhibits consists of two pages, which is a letter and an added paragraph 18 to the charter?

A. Yes, sir.

Q. And you know of your own knowledge that each of those charters was so amended?

A. Yes, sir.

Q. Now, was the first agreement that you had with the Detroit & Cleveland Navigation Company for the solicitation of automobiles reduced to writing, Mr. McCarthy?

123 A. It was.

Q. And is that agreement set out in this paper which I now show you?

A. Yes, sir.

Q. And which for identification is marked exhibit 13?

A. Yes, sir.

Q. And you know of your own knowledge that that was the original agreement between you individually and the Detroit & Cleveland Navigation Company for the solicitation of automobiles?

A. It was.

Mr. SULLIVAN: Just a minute off the record, if you please.

(Discussion outside the record.)

Exam. MCGRATH. Back on the record.

By Mr. FOSTER:

Q. That is the true agreement, Mr. McCarthy, with the exception that the spaces which are shown blank are the percentages which have been eliminated?

A. Yes, sir.

Q. Yes. Now, in 1933, Mr. McCarthy, I will ask you whether or not in your solicitation efforts it was necessary to add additional automobile vessels to handle the traffic?

A. It was necessary to obtain other vessels.

Q. And I ask you whether on August 3, 1933, you entered into an agreement with the Detroit & Cleveland Navigation Company to obtain the services of the steamers "Davis" and "Utica?"

124 A. Yes, sir.

Q. I will show you this document marked exhibit 14 and ask you if except for the percentages which have been blanked out, if that is a true copy of that agreement?

Mr. SULLIVAN. There are more than percentages. Except for the blanks.

By Mr. FOSTER:

Q. Except for the blanks?

A. Yes, sir; it is a true copy.

Q. And the Detroit & Cleveland Navigation Company and you individually performed under that agreement?

A. Yes, sir.

Q. And the steamers "Davis" and "Utica" were operated between Detroit and Buffalo and Detroit and Cleveland under the arrangement as outlined in this agreement?

A. Yes, sir.

Q. Did you subsequently and on April 17, 1934, enter into a further agreement with the Detroit & Cleveland Navigation Company for the solicitation of automobiles?

A. Yes, sir.

Q. I will show you this paper and ask you if that truly reflects that agreement with exception of the blanks which relate to the percentages?

A. It does.

Q. And this is the exhibit which is marked 15 for identification?

125 A. Yes, sir.

Q. I will ask you, Mr. McCarthy, whether subsequently and on February 18, 1937, you entered into an agreement with the Detroit & Cleveland Navigation Company for cancelling the agreement of April 17, 1934?

A. Yes, sir.

Q. And is that agreement truly reflected in the papers which you have before you there?

A. Marked exhibit 16.

Q. Which for identification is marked exhibit 16?

A. Yes, sir.

Q. And did you, Mr. McCarthy, as the principal stockholder of the T. J. McCarthy Steamship Company cause the T. J. McCarthy Steamship Company to sign a solicitation agreement with the Detroit & Cleveland Navigation Company?

A. Yes, sir.

Q. And since February 18, 1937 the solicitation agreement has been an agreement between the T. J. McCarthy Steamship Company, one of the applicants, and the Detroit & Cleveland Navigation Company?

A. Yes, sir.

Q. I show you a paper, Mr. McCarthy, marked for identification as exhibit 17 and ask you if that is an agreement entered into

between the Detroit & Cleveland Navigation Company and Automotive Trades Steamship Company?

126 A. Yes, sir; it is.

Q. And that agreement covers the operations of the steamer Morris S. Tremaine during 1936?

A. Yes, sir.

Q. And the letter of November 24, 1936, with exception of the blanks as to percentage, was the agreement entered into under which you operated?

A. Yes, sir.

Q. And the steamer Morris S. Tremaine was operated between Detroit, Michigan, Cleveland, Ohio and Buffalo, New York, on a profit-sharing basis?

A. Yes, sir.

Q. During 1936?

A. Yes, sir.

Q. And do you recall, Mr. McCarthy, whose bills of lading were used in the transportation of the merchandise handled by the Tremaine under that arrangement?

A. Under that arrangement they were handled on the D. & C. bills of lading.

Q. And that was for a matter of convenience?

A. Yes.

Q. I mean there was no reason why if you wanted to they could not have been handled on your own bill of lading?

A. There is no reason why they could not have been handled on our own bill of lading.

127 Mr. ELDRED. Now, this is exhibit 17 you are referring to?

Mr. FOSTER. Yes.

Q. I show you a paper, Mr. McCarthy, marked for purposes of identification as exhibit 18, an agreement between Detroit & Cleveland Navigation Company and the T. J. McCarthy Steamship Company. Now, is that the solicitation agreement between those two companies that was in effect until recently cancelled?

A. Yes; that is the agreement that was in effect until it was cancelled.

Q. As in the other exhibits, the blanks shown therein are the blanking out of the percentages?

A. Yes, sir.

Q. Did the T. J. McCarthy Steamship Company enter into an agreement with T. J. McCarthy, individually, following the agreement between the Detroit & Cleveland Navigation Company and the T. J. McCarthy Steamship Company?

A. It did, the identical agreement as the D. & C. had with T. J. McCarthy on payment of commissions, and so forth; just a transfer to the T. J. McCarthy Steamship Company.

Q. And is that reflected in this paper that is marked for identification as exhibit 19?

A. Yes, sir.

Q. Now, Mr. McCarthy, under this solicitation agreement with the Detroit & Cleveland Navigation Company from 1937 through 1941 did you engage solicitors to solicit automobile traffic?

128 A. We engaged all of the automobile solicitors to solicit the automobile traffic and paid them.

Q. And how many solicitors were engaged?

A. Employed at one time we had as many as nine solicitors in various parts of the eastern territory soliciting automobiles.

Q. And did you maintain offices in cities other than Detroit?

A. Yes; we maintained an office in Cleveland, Ohio, an office in Buffalo, New York and an office in Philadelphia and New York City.

Q. And did the Detroit & Cleveland Navigation Company have any solicitors for automobiles at all other than those who were soliciting under the agreement which the T. J. McCarthy Steamship Company had with the Detroit & Cleveland Navigation Company?

A. No; they didn't have any solicitors although they did contribute to the salary and expense of one solicitor in Pittsburgh, Pennsylvania with T. J. McCarthy.

Q. Was this particular man—did he devote part of his time to the solicitation of passengers and general freight?

A. Yes; he did. That was on the basis that he was hired.

Q. Now, Mr. McCarthy, was the charter on the steamer Ingalls for the season of 1940, with exception of the charter hire, similar in general terms to the charter on the Mead, which is in the record as exhibit 2?

A. It is identical.

129 Q. Now, did the Automotive Trades Steamship Company, Mr. McCarthy, enter into an agreement with the Detroit & Cleveland Navigation Company on the steamer George H. Ingalls for the season of navigation of 1941?

A. It did.

Q. And is that agreement reflected in this exhibit which we have marked 20 for identification?

A. Yes, sir; that is a copy of the agreement.

Q. And the blank spaces which have been left out of that agreement of March 8, 1941 related to payments of charter hire, is that right?

A. Yes, sir.

Q. Now, as the result of that agreement have the Detroit & Cleveland Navigation Company billed the Automotive Trades

Steamship Company for a so-called deficiency in automobiles transported on the Ingalls during the season of 1941?

A. Yes; they have billed the Automotive Trades Steamship Company for a deficiency of 761 automobiles on an adjustment of an agreed amount of 30,000 automobiles to be carried on the steamer George H. Ingalls for the season of 1941.

Q. In other words, the charter hire which they were to pay depended upon the automobiles transported?

A. That is right.

Q. Now, under that agreement, Mr. McCarthy, was the George H. Ingalls to take her regular turn at the dock?

130 A. Yes; under that agreement it specifies that she takes her regular turn at the dock for loading and unloading.

Q. That agreement is marked for identification as exhibit 20. Now, Mr. McCarthy, in pursuance of the option provisions on the Tremaine and Mead charters did the Detroit & Cleveland Navigation Company exercise those options for the season of 1942?

A. Yes; they did.

Q. And when did they do that?

A. The date, I believe, was December 23rd. I don't know that I have a copy of the agreement here but it was December 23rd.

Q. Had they in any previous year exercised that option prior to a few days before February 1st?

A. No. In one case it was after February 1st.

Q. And did the Detroit & Cleveland Navigation Company discuss with you the cancellation of the charter which they had exercised on the steamer T. J. McCarthy, Ex Morris S. Tremaine?

A. Yes; they did.

Q. And was an agreement made between Automotive Trades Steamship Company and the Detroit & Cleveland Navigation Company cancelling that charter?

A. Yes, sir; there was.

Q. And is that reflected in the document which you have before you there and which for identification has been marked exhibit number 21?

A. Yes; it is.

131 Q. And does exhibit 21 contain your covering letter which you mailed or sent to the Detroit & Cleveland Navigation Company for the cancellation of that charter?

A. Yes, sir.

Q. Did you also have discussions with the Detroit & Cleveland Navigation Company in connection with the proposed cancellation of the solicitation agreement between the T. J. McCarthy Steamship Company and the Detroit & Cleveland Navigation

Company and also the cancellation of charter on the steamer George W. Mead?

A. Yes, sir.

Q. And which they had previously exercised?

A. Yes, sir.

Q. And was an agreement made between the Detroit & Cleveland Navigation Company and the T. J. McCarthy Steamship Company cancelling that solicitation agreement and also cancelling the charter on the steamer George W. Mead for 1942?

A. There was such an agreement.

Q. And does the paper which you have before you, which for identification has been marked exhibit 22, contain that cancellation agreement?

A. Yes, sir.

Q. And likewise your covering letter?

A. Yes, sir.

Q. Now, Mr. McCarthy, since 1935 I will ask you whether when business conditions as a result of your solicitation or your
132 company's solicitation required the putting into service of additional automobile boats if you or your companies went out and acquired these additional automobile boats?

A. We did.

Q. And as the result of your efforts or your company's efforts in soliciting automobiles was it necessary from 1936 to the cancellation of this agreement to put on three additional automobile boats on Lake Erie?

A. Yes. There were actually four put on, but the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company only purchased and put on three of them.

Q. Well, the Fitch was put on in 1934, wasn't it?

Mr. ELDRED. Mr. Examiner, I don't see what materiality that has to do with the grandfather application of these applicants, the number of boats put on as a result of some solicitation. I don't want to be technical here but I don't see where the materiality of the operations of this applicant is on the grandfather date as to these.

Mr. FOSTER. I think it is very material, Mr. Examiner.

Exam. McGRATH. All right, proceed with the witness.

Mr. ELDRED. I don't want to press it but I mean, I think we have got a lot to do here and we don't want to stay here two or three days if we can help it.

By Mr. FOSTER:

Q. Did you endeavor on various occasions, Mr. McCarthy, to have the D. & C. acquire this additional tonnage
133 to handle this business?

A. Yes; on several occasions.

Q. And to have them assist the Automotive Trades Steamship Company in financing the conversion of these ships?

Mr. EISDRED. Well, now, I object to that. Now we are going far afield here, Mr. Examiner.

Mr. FOSTER. Mr. Examiner, I think that the only way we can show this full picture is to develop the picture and Mr. McCarthy had to acquire these boats and he did acquire them, he ran some of them in the general trade on the general route on the Great Lakes. He couldn't put them on the automobile trade until he could actually arrange to convert them and I think it goes to the whole basic principle of his rights under this Act.

Mr. EISEN. Mr. Examiner, if I may be heard; I don't see what difference it makes how he acquired the boats, why he acquired them or when? The application of the applicant is asking permission to continue operations that were in effect on a certain date. We still haven't gotten anything as to what the operations were on a certain date. Why he got the boats, how he paid for them, when he paid for them or anything like that has no bearing on the case.

Exam. MCGRATH. You may proceed. The objection is overruled.

By Mr. FOSTER:

134 Q. Did you have certain discussions, Mr. McCarthy, with the officials of the Detroit & Cleveland Navigation Company in connection with putting on these additional automobile boats?

Mr. EISEN. At what time?

Mr. FOSTER. Back in 1937.

A. Yes. 1936 it was, Mr. Foster.

Q. Well, you subsequently had discussions in 1937?

A. That is right and in 1937, for additional capacity.

Q. And did you submit at that time a memorandum to the Detroit & Cleveland Navigation Company?

A. Yes, sir.

Q. Covering those discussions?

A. Yes, sir.

Q. And is that memorandum contained in the document which you have before you?

A. Yes, sir.

Q. Which for identification is marked exhibit 23?

A. Yes, sir.

Q. Now, did the Detroit & Cleveland Navigation Company in any way assist in converting any of these vessels to automobile carriers?

A. No, sir.

Q. And did the Automotive Trades and the T. J. McCarthy Steamship Company purchase these vessels and give back mortgages?

A. They did.

Q. And, so far as you know——

135 A. Mr. Foster, may I correct my first answer in connection with some work on the steamer "Mead" on its between decks. We furnished the "Mead" as an automobile carrier. We furnished the "Tremaine" as an automobile carrier. The D. & C. later wanted to put on package freight and which was agreeable and by mutual agreement it was satisfactory for them to put on the package freight but it was necessary that they spend the additional money t strengthen the floors on both vessels or, rather, the deck and put in one gangway on the steamer "Morris S. Tremaine."

Q. But that was for the purpose of using them in package freight and not in automobiles?

A. That is right.

Q. But so far as the use of the vessels in the automobile trade were concerned, they had been purchased and converted wholly at the expense of either the T. J. McCarthy Steamship Company or the Automotive Trades Steamship Company?

A. Yes, sir.

Q. And in connection with the conversion of these vessels was it necessary for the company to raise funds by way of mortgage?

A. Yes, sir.

Q. And that was done?

A. And that was done.

Q. When you originally purchased the "Mead" did you give back a purchase money mortgage?

A. Yes, sir.

136 Mr. Eldred. Well, Mr. Examiner, I would just like to make an objection here, a further objection, as to the financial arrangements. It has nothing to do whatsoever with this grandfather operation. I would just like to have it entered on the record.

Mr. Foster. Well, part of this is also on the ability and fitness. I was going to develop that this company is now free from debt.

Mr. Eldred. Why don't you do that instead of going ahead from where he operated back in 1937 or 1936?

Mr. Foster. Well, he acquired the vessels.

Exam. McGrath. All right, proceed. The objection is overruled.

By Mr. Foster:

Q. And was that also true, Mr. McCarthy, at the time of the purchase of the "Tremaine" and "Ingalls?"

A. Yes, sir.

Q. Mr. McCarthy, at the time that the Automotive Trades Steamship Company purchased the "Tremaine" and "Ingalls" to handle this additional traffic, did you at that time have any discussions with officials of the Detroit & Cleveland Navigation Company?

A. I did.

Q. And what were those discussions and with whom did you have them? Or, rather, with whom did you have this discussion and about what were they?

A. With Mr. Wright, who wished to assure me, when I
137 told him that the boats had been inspected and passed inspection, he assured me that there was no responsibility on the part of the D. & C. for our purchasing the boat, and there was no liability for the D. & C. to use them and at that time advised him that I was taking it on my own responsibility and hoped to develop sufficient business to use the boats and asked if in the event sufficient business was developed in accordance with an agreement we earlier had would they not put on the boats that I had purchased rather than chartering more outside boats from some other company and he said oh, yes; they would.

Q. And that was done?

A. That was done.

Q. And as the business gradually developed the boats owned and controlled by one or the other of these applicants were put on to handle this additional business?

A. Yes, sir.

Q. And under the various charter arrangements which are in evidence here?

A. Yes, sir.

Q. Now, Mr. McCarthy, you purchased the "Tremaine" and "Ingalls" in 1936, did you not?

A. Yes, sir.

Q. And in 1936 I will ask you whether or not the automobile business was sufficient to require the use of all the "Mead," "Ingalls" and "Tremaine"?

138 A. No, it was not.

Q. And did the Automotive Trades Steamship Company operate the steamer "George H. Ingalls" on the Great Lakes generally in the year 1936?

A. It did.

Q. And you handled various types of cargoes?

A. Various types of cargoes; yes, sir.

Q. And how did you go about obtaining these cargoes, Mr. McCarthy?

A. Well, we called down and solicited other brokers and buyers and shippers of material that we carried, soliciting generally for cargoes wherever we could get them and of whatever nature we could get suitable for our vessel.

Q. And did handle during the season of 1936 on that vessel general cargoes over the general routes on the Great Lakes?

A. Yes, sir.

Q. Now, in 1937 what was done with the "Ingalls"?

A. The steamer "Ingalls" was chartered to the Cleveland-Cliffs Iron Company.

Q. And what was done with her in 1938?

A. The Cleveland-Cliffs Iron Company released her from her charter and the Automotive Trades Steamship Company put the steamer "Ingalls" into commission and solicited cargoes generally on the Great Lakes.

Q. And what various cargoes were handled in that vessel, 139 Mr. McCarthy, during the season of navigation of 1938?

A. Shall I enumerate them?

Q. Yes.

Mr. ELDRED. Now, it is all there in exhibit 27, isn't it?

Mr. FOSTER. That is right. I want to develop how he got those cargoes.

A. Is that exhibit 27, is that the number of that?

Q. That is exhibit 27.

A. Silica rock, coal, screenings, grain of various kind, were solicited from brokers in Buffalo, Cleveland, Chicago, wherever it was possible for us to pick up a cargo or to secure a cargo from whatever source that you usually apply to.

Q. And during the season of 1938 that vessel operated on Lake Erie, Lake Michigan, Lake Huron, and Lake Superior, is that right?

A. In 1938?

Q. Yes, in 1938.

A. And Lake Ontario.

Q. And Lake Ontario?

A. Yes, sir.

Q. So she operated on all five of the Great Lakes?

A. Yes, sir.

Q. And you got those cargoes by general solicitation through the ordinary sources of obtaining cargoes?

A. Yes, sir.

140 Q. Now, did the Automotive Trades Steamship Company operate the steamer "George H. Ingalls" in the general trade on the Great Lakes during the season of navigation of 1939?

A. It did.

Q. And were her operations during that year similar to those of 1936 and 1938?

A. Yes, sir; they were very similar.

Q. Now, I note, Mr. McCarthy, that the vessel did not come out until rather late in the season of 1939. I will ask you whether bulk shipping generally on the Great Lakes was rather slack in 1939?

A. Yes, it was very slow and slack. It was not until September before we could secure any cargoes for that vessel.

Q. And had you made any efforts or attempts to secure cargoes prior to that time?

A. Oh, yes. We had the boat laying there and wanted to put it to work but we could not secure any cargoes anywhere due to the slackness of business.

Q. But during the fall of that year you were able to line up sufficient cargoes for the ship to justify you, in your opinion, to bring the steamer out?

A. Yes. We got 10 cargoes, including a storage load, after the vessel came out in September and we kept her busy steadily from September until the end of the season.

141 Q. And did that vessel operate during 1939 on a route which would include Detroit and Duluth and Superior?

A. It did; yes, sir.

Q. And it would also include Detroit and Buffalo?

A. Yes, sir.

Q. And Detroit and Cleveland?

A. Yes, sir.

Q. And you solicited cargoes generally for transportation over those routes in 1939?

A. Yes, sir.

Q. And also transported cargoes over those routes during that period?

A. Yes, sir.

By Exam. McGRATH:

Q. Those cargoes consisted of what commodities?

A. Grain, refuse, screenings, oats, stone, flax, and so forth.

Q. And so forth?

A. Refuse.

Mr. ELDRED. Mr. Examiner——

By Exam. McGrath:

Q. Is that all now?

A. Well, there is a list of them here.

Q. Does that include them all?

A. Yes, sir.

Mr. Foster. Read them off, Mr. McCarthy.

The Witness. Grain, refuse.

142 Mr. Sullivan. They are all specified in there, aren't they?

The Witness. That is right. He asked the question Grain——

Exam. McGrath. Well, off the record, now.

(Discussion outside the record.)

Exam. McGrath. Back on the record.

Q. Now, have you named all the commodities which comprised the caroges on that vessel? The reporter will read them back to see whether you have omitted any.

(Previous answer read.)

The Witness. During the entire period of 1936, 1938, and 1939?

Exam. McGrath. That last period that you referred to.

Mr. Foster. During 1939, Mr. McCarthy.

Exam. McGrath. Read it, Mr. Reporter.

(Answer read.)

The Witness. That is all.

Mr. Eldred. I wonder if I might inquire at this time what rights are being sought here by the Automotive States Steamship Company? I mean I am not quite clear as to just what the application purports to cover. Are you going to use this exhibit for grandfather rights——

Exam. McGrath. Well, that exhibit is not before us now.

Mr. Eldred. Well, Mr. Examiner, there is testimony—I

143 just wanted to get the thing clear in my own mind, if I can, here.

Exam. McGrath. Do you care to make an answer to that?

Mr. Foster. What do you wish to get clear, Mr. Eldred?

Mr. Eldred. I want to know, first, what you are asking for, what rights you are asking for in behalf of Automotive?

Mr. Foster. In behalf of Automotive?

Mr. Eldred. Yes.

Mr. Foster. We are going to ask the general right to transport commodities on the Great Lakes.

Mr. Sullivan. As a contract or common carrier?

Mr. Foster. As a common carrier.

Mr. Sullivan. Common?

Mr. Foster. As a common carrier. That is what our application sets forth.

Mr. ELDRED. Are you asking for general commodities?

Mr. FOSTER. What do you mean by "general commodities"?

Mr. ELDRED. Well, I am trying to find out what you want, sir.

Exam. MCGRATH. Can't you be more specific now, Mr. Foster?

Mr. FOSTER. Well, we certainly are asking for the right to transport automobiles.

Mr. ELDRED. All right. What else?

Mr. FOSTER. Well, I don't think it is up to me to tell them what we are asking for. The application is here and the
144 Commission has docketed our case. I am not going to enter into any argument with counsel now about what we are asking for.

Mr. ELDRED. I am not asking you for any argument. I think it ought to be clear in the record what applicants are asking for.

Exam. MCGRATH. In addition to authority to transport automobiles, what other commodities?

Mr. FOSTER. We are not asking at this present time for any other specific commodity except automobiles and all of these commodities which were formerly carried when carried with automobiles or when carried with grain, three types of commodities.

Exam. MCGRATH. By "these commodities" what do you mean?

Mr. FOSTER. We mean the commodities which we have already shown on these exhibits. That is why I think the Examiner was right when he said Mr. Eldred was a little bit premature.

Mr. ELDRED. No, I am not premature. I think we have a right to know what the applicant is asking.

Exam. MCGRATH. Well, he has answered your question.

Mr. ELDRED. All right. Now, might I ask one other question here? Is the claim of the commodities other than those of automobiles an interim application or a grandfather application?

Mr. FOSTER. What is that question?

145 Exam. MCGRATH. Read it, Mr. Reporter.

(Question read.)

Mr. FOSTER. Well, both automobiles and the other commodities are grandfather.

Mr. ELDRED. Well, now, would you answer the question, Mr. Foster? I will try to put it another way.

Mr. FOSTER. Mr. Examiner, do you desire for Mr. Eldred to just keeping asking these questions? Do I have to answer these questions?

Exam. MCGRATH. Only for the purpose of clarification.

Mr. ELDRED. I am not trying to get into any argument, Mr. Foster. I am just trying to find out what the situation is so I can properly cross-examine Mr. McCarthy. I don't want to waste a lot of time.

Mr. FOSTER. Read the question back.

Mr. ELDRED. I will ask it again.

Mr. SULLIVAN. I think Mr. Foster said it was a grandfather application.

Mr. FOSTER. I said that.

Mr. ELDRED. It is entirely grandfather for these general commodities other than automobiles?

Mr. FOSTER. That is right, and to make myself plain, it is also grandfather and interim on automobiles.

Mr. ELDRED. All right. Now we are clear.

By Mr. FOSTER:

145 Q. Now, Mr. McCarthy, the Automobile Trades Steamship Company did not transport on the steamer "George H. Ingalls" any automobiles in 1939?

A. It did not.

Q. Were they approached to transport automobiles?

A. Yes; we were approached to handle automobiles in 1939 on the steamer "Ingalls."

Q. And was the schedule of that vessel such that you could not comply with that request?

A. That is right.

Q. She was tied up with other commodities?

A. Other commodities, with loads for different ports, at the time the cars were offered.

Q. Now, under your solicitation agreement with the Detroit & Cleveland Navigation Company you could not go out and solicit automobiles for transportation, is that right?

A. That is right, not in competition with the Detroit & Cleveland Navigation Company.

Q. Yes.

Mr. EISEN. You mean, Mr. Foster, he could not solicit automobiles for other than D. & C.?

Mr. FOSTER. I mean just what I say.

Exam. McGRATH. Please reserve that for cross-examination. Don't be interrupting unnecessarily.

Mr. EISEN. It was not cross-examination; merely for the sake of clarification.

292 By Mr. FOSTER:

Q. Now, Mr. McCarthy, did you operate any of these steamers in the upper lakes trade during the season of navigation of 1941?

A. No, sir; not on the Lake Superior.

Q. I say on the upper lakes trade?

A. No, sir.

Q. At the end of the season of 1941 didn't the "Ingalls"——

A. I beg your pardon, I forgot that one trip. At the end of the season of 1941 the steamer "Ingalls" went to Ft. William for a load of storage grain and transported it to Buffalo.

Q. And that was following the termination of the 1941 charter?

A. With the D. & C. Navigation Company; yes, sir. When they advised they were through with the boat for the season we secured a cargo and carried it.

Q. And neither the "Mead" nor the "T. J. McCarthy," Ex the "Morris S. Tremaine," were returned to you in sufficient time to place the vessels in another service, is that right?

A. That is right.

Q. They both operated with automobiles on Lake Erie until well into December?

A. Well into December and were tied up at that time. It was too late for any other operation.

Q. Now, Mr. McCarthy, have there been some discussions between you and the War Production Board and the Maritime Commission concerning these three ships recently?

148 A. Well, there have been discussions in January and February.

Q. I will ask you whether or not you were called to Washington for the purpose of discussing with the War Production Board the possible conversion of all of these vessels into iron ore carriers?

A. Yes, sir; I was.

Q. And all three of the ships have been surveyed by surveyors of the United States Maritime Commission with a view to determining the feasibility of conversion into iron ore carriers for the duration of the war, is that right?

A. Two of them have been surveyed. The third still has a load of grain in it, the "Ingalls," at Buffalo and they asked to be advised when it was unloaded so that they could continue the survey.

Q. In other words, the "Ingalls" has not as yet been surveyed?

A. The "Ingalls" has not as yet been surveyed.

Q. And how recently did you receive inquiry about the "Ingalls?"

A. This morning.

Q. And from whom was that received?

A. Gielow, Inc., who are doing the surveying for the Maritime Commission.

Q. And at the present time you don't know whether these vessels will be requisitioned for use in the iron ore trade or not, is that right?

A. I don't know.

149 Q. You have been told that that is a distinct possibility, dependent upon the result of these surveys?

A. All the discussions have been on a basis of converting them into ore carriers.

Q. These vessels, the "T. J. McCarthy" and the "Mead," are now in all respects suitable for automobiles?

A. Yes, sir.

Q. Now, was it necessary last fall for you to make changes in the "Ingalls" in order for her to go into the grain trade?

A. Yes, sir. We had to make considerable changes.

Q. And what were those changes, Mr. McCarthy?

A. We had to take the false deck off on the spar deck, the false deck covering the hatch-covers and had to take out the two between decks and some of the channels on the deck beams in the way of the hatches, which would interfere with the loading and unloading of the vessel through these hatches on the top deck or the spar deck.

Q. And in order to place her back in the automobile trade it will be necessary to renew the false top deck and to put back the in the between decks, is that right?

A. Yes, sir.

Exam. McGrath. At what time in 1941 was that change made in the vessel?

The Witness. In December, after December 3rd. The D. & C. had turned the vessel back to us at noon on December 3rd
150 and the change was made after that time.

By Mr. Foster:

Q. And how, Mr. McCarthy, did you obtain the cargo for the "Ingalls" in 1941? Was it necessary for you to solicit that cargo?

A. Yes; we had to solicit various grain brokers in Cleveland and Buffalo for a cargo for the "Ingalls."

Q. And you did obtain a cargo for her?

A. We did obtain a cargo; yes, sir.

Q. And neither the Automotive Trades Steamship Company or the T. J. McCarthy Steamship Company have any agreements of any kind or nature now, either as to solicitation or option for charter of any of its vessels, to the Detroit & Cleveland Navigation Company?

A. No, sir.

Q. Mr. McCarthy, in connection with the handling of these automobiles was it necessary that the T. J. McCarthy Steamship Company or you individually obtain dock space for the handling of these cars at Detroit?

A. It was.

Q. The Detroit & Cleveland Navigation Company, I take it, did not have the dock facilities to handle the volume of automobiles that were being obtained?

A. No; they did not have the required space or the necessary space.

Q. And did you negotiate a lease for the Iron Street property so-called?

151 A. Yes; I did negotiate a lease for dock space at the foot of Iron Street.

Q. And did you endeavor to get the Detroit & Cleveland Navigation Company to assume that lease?

A. I did.

Q. And were you successful in those efforts?

A. No. The only way they would use the property was on a per car basis, paying only when they used it for the cars put over the dock. That was under a separate corporation, however. The name of the corporation was the Lake Materials Company.

Q. And do you own the stock in that company?

A. Yes, sir.

Q. All but the qualifying shares?

A. Yes, sir.

Q. And was that dock actually operated by you at a loss in certain years?

A. Yes; it was for several years at a loss.

Q. And would it have been possible to have handled the volume of automobiles handled on Lake Erie, which were handled by the Detroit & Cleveland Navigation Company's own vessels and those of yours which were under charter, had it not been for that dock?

A. It would not have been possible.

Q. Do you recall, Mr. McCarthy, how many cars were handled over that dock in any particular year?

152 A. Yes. I believe there is an exhibit there; but pretty close to 30,000 cars, or in the neighborhood of 30,000 cars this year, in 1941.

Mr. FOSTER. Mr. Examiner, I would like to check back some of Mr. McCarthy's testimony. I wonder if we could have about a ten minute recess at this time?

Exam. MCGRATH. All right. We will take a brief recess, gentlemen, ten minutes.

(Whereupon a short recess was had.)

Exam. MCGRATH. You may proceed.

By Mr. FOSTER:

Q. Mr. McCarthy, I thought I had covered this in the earlier testimony but apparently I had not. At the time that the steamers "Ingalls" and "T. J. McCarthy" were purchased were they conventional bulk carriers?

A. They were conventional regular bulk carriers. Pardon me. The "McCarthy"—the "Tremaine" was a bulk carrier but the steamer "George W. Mead" was a package freight boat.

Q. That was a package freight boat?

A. Yes, sir.

Q. She had between decks and side gangways?

A. She had between decks and side gangways, whereas the "Tremaine" had just the two compartments; an open hold bulk carrier vessel.

Q. And that was also true of the "George H. Ingalls"?

A. That was also true of the "George H. Ingalls."

153 Q. And these vessels were converted to bulk carriers, one in 1936 and the other in the fall and winter of 1939, is that right?

A. They were converted to automobile carriers.

Q. To automobile carriers; yes.

A. Yes.

Q. And for the purpose of the record here will you state just what it was necessary to do to those vessels to convert them into the automobile trade?

A. Yes. We had to take out of each of the two vessels, the "McCarthy" and the "Ingalls," two bulkheads and——

Q. Excuse me, Mr. McCarthy. That question and answer may be stricken because it is covered in the record on page 53.

Now, Mr. McCarthy, the record shows, on page 53, as to the cost of these conversions, "$400,000." Now, that is a typographical error, is it not?

A. Oh, yes; yes.

Q. What was the approximate cost of converting each of these ships into an automobile carrier?

A. $40,000.

Q. $40,000. Now, Mr. McCarthy, has your arrangement and that of the T. J. McCarthy Steamship Company from the inception, so far as your solicitation agreement is concerned with the Detroit & Cleveland Navigation Company, been on a percentage basis?

154 A. A percentage basis.

Q. A percentage of the gross freights on automobiles?

A. Yes; it has been on a percentage of the gross freight on automobiles.

Q. And, as you have previously testified, the solicitation of automobiles was exclusively either with you or with the T. J. McCarthy Steamship Company?

A. Yes, sir.

Q. Now, without giving any actual figures—you do have, of course, figures on which you have been paid these commissions?

A. Yes, sir.

Q. But without giving the actual figures could you tell us what percentage of increase in automobile revenue there was between 1934 and 1933?

A. There was between 35 and 40 percent increase in 1934 as against 1933.

Q. And between 1935 and 1934?

A. Approximately 100 percent increase over 1934.

Q. And what increase between 1936 and 1935?

A. About a 20 percent increase in 1936 revenue over 1935.

Q. And what increase between 1937 and 1936?

A. Approximately 12 percent over 1936.

Q. And what was the situation in 1938 in relation to 1937?

A. We had a very bad year in 1938 all over the country. The automobile business went off more than 50 percent as far as
153 revenue is concerned, and there was quite a decrease.

Q. And the automobile revenue, then, between 1938 and 1937 showed a very substantial decrease?

A. Yes. Approximately $350,000, if you want to use the figures on the decrease.

Q. Then in 1939, what was 1939 in relation to 1938?

A. That was 50 percent better in 1939 than in 1938.

Q. And what was the relation between 1940 and 1939?

A. 40 percent increase in 1940 against 1939.

Q. And what was the situation between 1941 and 1940?

A. 20 percent increase in 1941 as against 1940; making a total increase from the time it was started in 1933 through 1941 of about 400 percent increase in the business—in the revenue, rather, for automobiles.

Mr. Foster. We wish to offer at this time in evidence exhibits 11 to 23, inclusive, all of which have been previously identified by the witness, Mr. McCarthy.

Mr. Eisen. Can that be held until after cross-examination?

Exam. McGrath. That is rather unusual.

Mr. Eisen. No; I mean the receipt.

Exam. McGrath. That is what I mean. Is that satisfactory to you, sir?

Mr. Foster. What is that?

Exam. McGrath. Is that satisfactory to you?

Mr. Foster. Well, it is satisfactory to me if it is satis-
156 factory with the Examiner.

Exam. McGrath. All right, I won't interfere.

Mr. Foster. You may cross-examine.

Cross-examination by Mr. Eisen:

Q. Mr. McCarthy; on your exhibit No. 14, I believe the names of the steamers Davis and Utica appear in this record for the

first time, in this exhibit. Can you tell us how long those steamers were used?

A. They were used to carry what overflow that the T. J. McCarthy soliciting had developed over and above the D. & C.'s capacity and they were used some months. I wouldn't say! I couldn't tell you how many months. If it was necessary I could get it.

Q. You mean it was used after 1933?

A. It was used in 1933 and one of them was used in 1934.

Q. But were not used beyond 1934?

A. They were not used beyond 1934.

Q. Now, you indicated that the D. & C. exercised their option in December of 1941 originally with respect to the boats covered by your exhibits?

A. Yes, sir.

Exam. McGRATH. Was that all three of them or only two of them?

Mr. FOSTER. Just the two. They did not have an option on the Ingalls.

157 The WITNESS. Just the two. They did not have an option on the Ingalls.

By Mr. EISEN:

Q. That is, the T. J. McCarthy and the Mead?

A. And the Mead; yes, sir.

Q. Now, was that option released at your request because of your desire to have the government requisition those boats and use them in the war effort?

A. No.

Q. You did not indicate that to the D. & C. as the basis for your request that they release them?

A. That was discussed but that was not the basis of our request.

Q. That was discussed as one of the reasons?

A. As one of the possibilities.

Q. Well, as one of the possibilities precipitating your request?

Mr. FOSTER. There is no testimony here that he made a request.

Mr. EISEN. Well, that is what I am trying to find out.

Mr. FOSTER. Well, ask him that. Don't go on the assumption that he has made a request or ask him that in the question.

By Mr. EISEN:

Q. Well, did you request the D. & C. to release the option?

A. No.

Q. They just released it without any request, without any conversations or anything?

A. We had had conversations but I did not request them
158 to release the vessels because they had exercised their options on those two vessels and I wanted to know what they were going to use the boats for and they said they were going to use them for package freight. We had two or three conversations as to what was going to happen to the boats and it was discussed as a possibility that the government might requisition them and that, of course, was known to the D. & C. and might have been one of their reasons for originally having exercised their option, I don't know, but I did not ask that question but it was quite generally known that the government has been asking about these vessels.

The D. & C's attitude, or their reply was that they wanted them for package freight. I did say to them I didn't think that there would be sufficient package freight and I told them earlier, in the meeting of the general freight agents, that there would not be sufficient business this year, in my opinion, to load more than their own passenger boats, of which they have six and possibly their own steamer Fitch for part of the time and at the very outside one of our chartered vessels.

Now, that was not—that was giving my best judgment and best opinion to the D. & C. as to what they might need this year. In the face of that particular statement to the general meeting of the general agents, within a week or ten days after this meeting the D. & C. exercised their option on chartering two of the
159 vessels, the Mead and the McCarthy, and the reason they say that they chartered them was to carry package freight, that they expected a large volume of package freight. And in our discussion—in my discussion with Mr. McMillan—there was just the two of them there—James Dare McMillan, president of the D. & C. Navigation Company—after he had exercised his options I told him I didn't think he would have sufficient business to keep them busy but we had the boats and they could have them if they wanted them and having their options, having exercised their options at the time that they did, with one of the provisions in the charter originally which would release the D. & C. Navigation Company from any obligation to use the boats in the event of strikes, war, civil commotion, and so forth, that I didn't think that their exercising of the charter when there was war and war was on that they could be released under that particular item in the charter. I didn't know whether they could or could not. That is a legal question and I am not familiar with it, but I did want to point that out, trying to give them my best opinion and my best advice.

Naturally, I knew that I was generally correct as far as bulk commodities. The D. & C. also knew that. Whether their reasons—well, I can't state why they wanted the charter, except they told me they wanted to carry package freight; and it was by agreement that these charters were cancelled. As to who said, "Release us from this charter," that was never said
160 that way, except that Mr. McMillan handed me the release and said, "Will you sign it?" I said, "I would like to read it, please, and then I will sign it," and we did.

Exam. McGrath. Well, when was that release handed to you by an official of the D. & C.?

The Witness. February 4, 1942, after several discussions in the interim.

By Mr. Eisen:

Q. Now, you said you had general conversations—you had had conversations with the government in January with respect to the conversion of these boats into iron ore carriers?

A. Yes, sir.

Q. The D. & C. had already exercised the option with respect to those boats?

A. Yes, sir.

Q. Did you believe at that time that the option would be exercised—I mean that the option would be cancelled?

Mr. Foster. I can't see why that is material.

The Witness. I had no reason to believe it.

Exam. McGrath. Well, he has answered it.

By Mr. Eisen:

Q. Now, just to clarify the record, Mr. McCarthy, Mr. Foster asked you if it was not a fact that you could not solicit automobiles under your agreement with the D. & C. Didn't your agreement with the D. & C. specifically require you to solicit automobiles for them?

161 A. Oh, it specifically required me to solicit automobiles and I was not to solicit in competition with them. That was required and understood, of course, that it was to be exclusively for the D. & C. on their runs.

Q. So all you could do was solicit automobiles for the D. & C. on the D. & C. run?

A. That is right, under the terms in my charter on those boats.

Q. I just wanted to clarify that point.

A. That is right.

Q. Now, you testified, did you not, concerning the activities and operations of the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company at the prior hearing in this case on September 8, 1941?

A. Yes, sir.

Q. Now, the activities of the two companies, as you testified in that hearing, covered the operations of the company immediately prior to January 1, 1940, did they not?

Mr. Foster. No, it covered only a portion of it. That is why we amended our application this morning, Mr. Eisen.

The Witness. A portion of it. We testified as to that part of it.

By Mr. Eisen:

Q. I say immediately prior to January 1, 1940.

A. Yes, we testified to it as per the transcript.

Q. Now, when you testified on September 8, 1941, did you also testify at the same time, or was it your understanding——

162 Mr. Foster. Just a moment. Mr. Examiner, I absolutely object to this form of questioning. If he wants to impeach the witness he can ask him the question and ask him if he answered it in a certain manner.

Mr. Eisen. I am not impeaching him.

Mr. Foster. Don't refer to the record in that manner then.

Exam. McGrath. What is the purpose of going over the witness' direct examination in the prior hearing? You cross-examined him on that in the other hearing.

Mr. Eisen. I don't want to go over that. This hearing is set to cover two years, operations in existence on January 1, 1940, and operations in existence between January 1, 1940, and February 1, 1941.

Mr. Foster. All right. What is your question?

Mr. Eisen. Now I want to know whether his testimony at the last hearing covered both phases of that and if if did not, in what way the operations between January 1, 1940 and February 1, 1941, differed from what he testified to.

Mr Foster. Well, that would involve the witness reading his whole testimony over.

Mr. Eisen. No. He testified——

Exam. McGrath. Well, the prior hearing, as I understand it, related solely to the application then pending, which was for authority to continue operations in existence on January 1st, 1940, and continuously thereafter.

163 Mr. Eisen. Well, that would automatically embrace February 1, 1941.

Exam. McGrath. Certainly.

Mr. Eisen. Well, I just wanted to establish that on the record. That is the only thing I am asking him.

Exam. McGrath. Well, doesn't the record speak for itself on that?

Mr. Eisen. Well, I think it does, but just so there won't be any argument I want to have those two things clarified.

Mr. Sullivan. That hearing was last September. That surely can be brought down to date.

Mr. Eisen. The hearing was on September 8, 1941 and when he said that his operations were as testified to on September 8, 1941, that covered right up to September 8, 1941. Then I want to know if the operation has changed in any respect since September 8, 1941 down through the beginning of this year.

Exam. McGrath. All right, that is a fair question. Can you answer that?

Mr. Eisen. First of all I think we ought to have whether his testimony was intended by him to cover through February 1, 1941?

Mr. Foster. Well, I can answer that question by handing him the application. It was not. That is why we made the amendment we made this morning.

Mr. Eisen. I don't think Mr. Foster is testifying. I
164 want to know if Mr. McCarthy testified as to the operations of his company through February 1, 1941 and, if he did not, how they were different on and after January 1, 1940. I think that goes to the very meat of this whole proceeding.

Exam. McGrath. Will you answer that question?

The Witness. There is no difference in the operation.

By Mr. Eisen:

Q. There is no difference immediately prior to January 1, 1940 and during the period January 1, 1940 up to and through February 1, 1941?

A. You are speaking about the operation now?

Q. That is right.

A. There is no difference in the operation.

Q. So your testimony covers both periods?

A. Yes, sir.

Mr. Foster. That is, his testimony today and prior.

Mr. Eisen. That is right, his testimony in this proceeding.

Q. Now, with respect to your operations between February 1, 1941 and February 1, 1942, were they any different from your operations on January 1, 1940 or the operations that you testified to at the last hearing?

Mr. Foster. Now, Mr. Examiner, I object to that. That calls for a legal conclusion, whether or not operations were different. Now, the record shows what these operations were.

Mr. Eisen. All right, I will withdraw the question.

165 Mr. Sullivan. Now, if the witness can say they were the same for one period why can't he say if they were different for another, if they were different?

Mr. Eisen. I will reframe it this way, so it is not objectionable.

Mr. Sullivan. I am talking to Mr. Foster.

Mr. Eisen. I know that.

Q. Did the testimony that you presented at the last hearing cover the operations of the T. J. McCarthy Steamship Company and the Automotive Trades Steamslip Company during the period February 1, 1941 to February 1, 1942?

Mr. Foster. Mr. Examiner, I submit that that is a wholly improper question and that the record speaks for itself.

Mr. Eisen. Well, Mr. Examiner——

Exam. McGrath. Well, ask him that question, then, whether they were any different on and after that date.

Mr. Eisen. That is what it was.

The Witness. I didn't get it quite that way.

Exam. McGrath. Go back and ask it over.

By Mr. Eisen:

Q. Was there any difference in your operations after February 1, 1941 to February 1, 1942, than you testified to in the last proceeding?

A. I think I testified that in 1939 we ran a bulk boat, didn't I?

Q. No; I am only talking about automobiles, that is all I am interested in.

166

Mr. Foster. Well, now, I say that that calls for a conclusion because——

Mr. Eisen. Well, Mr. Examiner, I can go back.

Exam. McGrath. What is the fact?

Mr. Foster. The fact is——

Exam. McGrath. Let the witness answer.

Mr. Foster. He is going to have to draw conclusions, Mr. Examiner, on legal documents which have been offered here in evidence; I mean the charter arrangements.

Mr. Eisen. I can undertake to ask him every question I asked him at the last hearing and get his answers but that is going to take quite a long time. Mr. McCarthy says he remembers his own testimony. He can either say it is the same or it is different in this and this respect.

Mr. Foster. Mr. Examiner, I point out that that calls for a legal conclusion because, obviously, the charter arrangement on the "Ingalls" for 1941 was not the same as it was in 1940.

Mr. Eisen. Let him testify. He testified on September 8, 1941——

Mr. Sullivan. Well, it was the same with that difference.

Mr. Foster. Well, that is all right, but to ask this witness——

Mr. Eisen. He knows his operation. Let him tell us how it was different.

167

Exam. McGrath. What is your answer?

The WITNESS. The difference in the operation between February 1, 1941, and February 1942—it was no different in February 1941 than in February of 1942.

By Mr. EISEN:

Q. Was there any difference in your operation between January 1, 1940, and February 1, 1941, between that period?

A. January 1940 and February 1941?

Q. To February 1, 1941, as against February 2, 1941, to February 1, 1942?

A. It is a long question. I will say there isn't any difference, just to get it off the record.

Exam. MCGRATH. And your answer relates to the season of open navigation?

The WITNESS. Yes.

Mr. EISEN. That is all my question pertains to, the season of open navigation with respect to automobiles.

Exam. MCGRATH. Any further questions, Mr. Eisen?

Mr. EISEN. No; I am finished.

Exam. MCGRATH. Any further questions on cross examination?

Mr. ELDRED. I would like to ask one or two.

Q. Mr. McCarthy, I believe you made some statement here this morning in connection with some package freight being carried on the boats which were chartered to the D. & C. Navigation
168 Company?

A. Yes, sir.

Q. Are you making any claim here for rights upon the basis of the package freight that was transported?

A. I am making claim for all the rights I can get.

Q. Well, I mean are you making any claim for the rights to transport package freight?

A. Yes.

Q. You are?

A. Yes; if it is so ruled by the Commission, and they are the ones to rule on it.

Exam. MCGRATH. Well, is it your position that either of the applicants has transported package freight during the grandfather period, that is, during the season of navigation of 1939 and continuously since that time?

A. These vessels carried the freight that I had under charter to the D. & C.

Q. During that period?

A. During that period; yes, sir.

By Mr. ELDRED:

Q. Well, I want to know, are you making any claim upon that basis?

Mr. Foster. I think he has answered the question that he is making the claim based upon what the Commission ultimately rules on it.

The Witness. Yes; I am making that claim.

169 By Mr. Eldred:

Q. Do you propose to submit any evidence showing what those commodities were and when they were transported?

A. The evidence is here. All the evidence we have in that regard has been put in or will be put in before the thing is finished.

Q. Now, you referred to an exhibit marked for identification No. 27.

Exam. McGrath. Well, off the record.

(Discussion outside the record.)

Exam. McGrath. Back on the record.

By Mr. Eldred:

Q. Mr. McCarthy, were any of the commodities which you testified this morning that were transported on the steamer "Ingalls" during the year 1939, such as grain, refuse, screenings, stone, were they transported in connection with automobiles?

A. No, sir.

Q. And they were not in any way—those commodities were not package freight?

A. No, sir.

Q. And for any of the package freight which was transported on the boats that you had chartered to the D. & C. Navigation, did you ever issue any bills of lading?

A. No, sir.

Q. Did you ever have any tariffs?

170 A. Not prior to 1940.

Q. Have you published any since?

A. Oh, yes.

Q. For package freight?

A. Not for package freight.

Q. Did your contract with the D. & C. provide for the solicitation of package freight?

A. It did not.

Q. Were you ever paid by the D. & C. Company for the solicitation of package freight?

Mr. Foster. I think we are going way beyond the witness' direct examination, Mr. Examiner, and I object to it on that ground.

Exam. McGrath. Well, I believe the witness covered that in his direct testimony, as I recall. He said that the D. & C. carried package freight on some of his vessels that were chartered from applicant.

Mr. FOSTER. I think he did. I withdraw the objection. He said they were.

Mr. ELDRED. I would not have cross-examined unless he——

Exam. MCGRATH. All right.

The WITNESS. I have never been paid for soliciting any.

By Mr. ELDRED:

Q. You have never solicited any package freight for the D. & C.

A. No, sir.

171 Mr. ELDRED. That is all I have.

Exam. MCGRATH. Any further questions on cross-examination?

Mr. SULLIVAN. One or two, if you please.

Q. Mr. McCarthy, in the 1939 operations by the Automotive Trades Steamship Company, when you carried the cargoes you have testified about, in each instance the cargo embraced a single commodity, did it not?

A. Yes, sir.

Q. And they are all the so-called bulk commodities?

A. Yes, sir.

Q. Either you or your counsel said that that operation in 1939 was as a common carrier. Is the Automative Company a member of the Lake Carriers' Association?

A. No.

Q. In your operations in carrying grain I take it you used the 1936 American form of lake grain bill of lading?

A. Yes, sir.

Q. And are you not aware that that bill of lading expressly negatives the fact that the boat owner is a common carrier?

Mr. FOSTER. Just a moment. That is a legal conclusion, Mr. Examiner, and I object to it. The bill of lading is not in evidence.

Mr. SULLIVAN. Will you produce that, Mr. Foster? Will you produce the bills of lading or forms or copies of those you

172 used in 1939?

Mr. FOSTER. If they are available we will; yes.

Mr. SULLIVAN. Well, if you are in the steamboat business you have got several copies in your office. Will your also produce the bills of lading used on commodities other than grain?

Mr. FOSTER. No; we won't produce any bills of lading. We are not going to produce any of those bills of lading unless the Examiner says it is necessary.

Mr. SULLIVAN. Mr. Examiner, I ask you, if you please, to direct the applicants here to produce the bills of lading under which they functioned.

Exam. MCGRATH. Can't you give us representative and typical bills of lading covering that?

Mr. FOSTER. I don't know whether we can or not. Some of these cargoes were——

Exam. MCGRATH. Will you make an effort to do that during the course of the hearing?

Mr. FOSTER. If the Examiner desires it we will.

Exam. MCGRATH. I think that ought to be done.

Mr. FOSTER. All right.

Exam. MCGRATH. Any further questions?

Mr. SULLIVAN. No, sir.

Mr. LEWIS. I have one or two questions.

Exam. MCGRATH. All right.

173 By Mr. LEWIS:

Q. Mr. McCarthy, you testified to an arrangement whereby you provided the use of the so-called Iron Street dock to the Detroit & Cleveland Navigation Company during the season of navigation?

A. Yes, sir.

Q. And was that arrangement in writing?

A. No; I don't believe it was in writing.

Q. But it constituted an agreement which you entered into then that was mutually agreeable, as I understand it?

A. Yes, and there had been some letters written in connection with the change of conditions and terms, and so forth.

Q. Now, under the terms of your charters for these vessels was it your obligation or the obligation of your companies to provide moorage for those vessels between the time of the close of the season of navigation each year and the opening of navigation the following year?

Mr. FOSTER. Just a moment.

The WITNESS. Yes.

Mr. FOSTER. Mr. Examiner, I object to that question. The charter is in evidence and speaks for itself.

Mr. LEWIS. He has answered it. He says "Yes." It is just introductory to my next question.

Q. And it was the obligation of your companies under the charters. And what dockage facilities did you use or have you used during the past season, 1941, for the purpose of moor-

174 ing those vessels?

A. Well, there is one of them tied up in Buffalo with a load of storage grain.

Q. That is the "Ingalls," that you have already referred to?

A. Yes. And there are two of them that are at the U. S. Rubber and Iron Street dock. They lap one on the other. We have to use both docks.

Q. That is where they are now?

A. That is where they are both now, yes, sir.

Q. And where were they moored the previous seasons?

A. I think they were at Iron Street in 1940 also.

Q. All three?

A. There was one year, either 1939 or 1940, that only two of them were there but I won't say. I will answer yes, they were all there in 1939.

Q. At any rate, so long as you have had the operation of that dock in the hands of your company you have used it for moorage purposes for these vessels, in part at least?

A. That is right. There was no charge to us for the mooring rights on that dock.

Q. No. Now, in testifying to the increases and decreases of revenue from the automobile traffic over the years 1934 to 1941 you omitted to give us the percentage of decrease that occurred in 1938. Could you supply that for us?

A. Yes, sure, it will just take a minute. It would be
175 about 55 percent, wouldn't it?

Q. A decrease of approximately 55 percent in 1938 as compared with 1937?

A. Yes, sir.

Mr. Lewis. That is all.

Exam. McGrath. Any further questions on cross examination? (No response.)

By Exam. McGrath:

Q. Mr. McCarthy, as I recall your testimony, you stated that in 1936 and again in 1938 the steamer "Ingalls" was employed for the transportation of what you called general cargo and that you solicited the general public for cargo for that vessel during those years. Am I correct in recalling your testimony?

A. Yes, sir.

Q. Now, that is the steamer that is owned by the Automotive Trades Steamship Company?

A. Automotive Trades Steamship Company.

Q. Automotive Trades?

A. Yes, sir.

Q. Now, did that company consider itself subject to regulation under the Intercoastal Shipping Act of 1938 and did it undertake to comply with the provisions of that Act as administered by the Maritime Commission?

A. Yes.

Q. It did?

176 A. We published no tariffs, of course, on the bulk commodities, if that is the administration you mean, Mr. Examiner.

Q. That is what I mean. I want you to understand my question now. Didn't the Maritime Commission require the publication of tariffs——

A. No.

Q. Of common carriers of bulk commodities on the Great Lakes?

A. No, sir.

Q. In any event you did not consider, your company or the Automotive Company did not consider itself subject to the Intercoastal Shipping Act of 1933, as amended, to that extent, is that correct?

A. That is right.

Q. You did not undertake to comply with any provisions, if any, in their requiring the publication of tariffs?

A. No; we did not.

Q. As common carriers of bulk commodities on the Great Lakes?

A. No, sir, we did not.

Exam. McGrath. Have you any questions on redirect, Mr. Foster?

Mr. Eisen. I have one question raised by you, if I may ask it. May I?

Exam. McGrath. All right.

By Mr. Eisen:

Q. Did your company publish any tariffs with the United
177 States Maritime Commission under the Intercoastal Shipping Act of 1933, as amended by the Act of 1936, with respect to the transportation of automobiles?

A. No.

Mr. Eisen. That is all.

Exam. McGrath. Any questions on redirect, Mr. Foster?

Redirect examination by Mr. Foster:

Q. Mr. McCarthy, you did not have in mind when you leased the Iron Street dock that you were doing so just for a place to moor those ships, did you?

A. No; because there is plenty moorage that you could get—we have moored those vessels at other docks during the winter and other times for $50 for the season and at other times for a hundred dollars, where the rental of this property ran into several thousand dollars a year.

Q. In fact, it originally was $10,000 a year, was it not?

A. It originally was $10,000 a year; yes, sir.

Q. Do you know, Mr. McCarthy, whether or not you do have in your office these bills of lading covering those 1938 and 1939 shipments?

A. We did get some of the bills of lading but whether the 1939 are there I couldn't say right now, but we will make an effort to

locate them, because a great many of these bills of lading the broker kept for himself.

Mr. SULLIVAN. I am interested merely in the form.

The WITNESS. The form of the bill of lading? I think
178 I could get you one without any difficulty; yes, sir.

Mr. FOSTER. I think that is all.

Exam. MCGRATH. Any further questions of this witness?

Mr. FOSTER. No.

Exam. MCGRATH. Exhibits 11 to 23, inclusive, are received in evidence.

Mr. ELDRED. Mr. Examiner, I would like to offer an objection to the receipt of these exhibits.

Exam. MCGRATH. Well, I thought you were through?

Mr. ELDRED. Well, I didn't want to——

Exam. MCGRATH. All right, what are the objections? Go ahead.

Mr. ELDRED. I will waive them, Mr. Examiner, if it is all the same.

(Exhibits Nos. 11 to 23, inclusive, Witness McCarthy, received in evidence.)

Exam. MCGRATH. That appears to be all, sir. Have you some further witnesses?

Mr. FOSTER. Mr. Hoffman is going to take the stand.

WILLIAM J. HOFFMAN was sworn and testified as follows:

Direct examination by Mr. FOSTER:

Q. Will you state your full name, Mr. Hoffman?

A. William J. Hoffman.

Q. Where do you reside?

179 A. 1725 Van Dyke Avenue, Detroit, Michigan.

Q. By whom are you employed?

A. By Mr. T. J. McCarthy. I also work for the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company as general freight agent.

Q. You are the general freight agent of the two companies?

A. Yes, sir.

Q. And as such do you have general control over the records of the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company?

A. Of commodities transported; yes, sir.

Q. Have you prepared from those records, Mr. Hoffman, a compilation showing the number of automobiles transported on the steamer "George W. Mead," owned by the T. J. McCarthy Steamship Company and the steamer "T. J. McCarthy" and "George H. Ingalls," owned by the Automotive Trades Steamship Company, for the years 1935 through 1941?

A. Yes, sir.

Q. And showing the various ports between which these cars were transported?

A. Yes, sir.

Q. And is that compilation shown on the paper which for identification has been marked exhibit 24?

A. Yes, sir, except for a correction to be made. For the year 1937 on the steamer "McCarthy" the total should read
180 "38,032"; a typographical error.

Exam. McGRATH. Instead of "28"?

The WITNESS. Yes, sir. There is a typographical error on there.

By Mr. FOSTER:

Q. And have you also had prepared, Mr. Hoffman, a statement showing the total number of automobiles transported under an arrangement between the T. J. McCarthy Steamship Company and the Detroit & Cleveland Navigation Company and the percentage carried on vessels owned by the Automotive Trades Steamship Company and T. J. McCarthy Steamship Company in comparison to the number carried on vessels owned by the Detroit & Cleveland Navigation Company?

A. Yes, sir.

Q. And do you have that before you?

A. Yes, sir.

Q. Has it been marked for identification as exhibit 25?

A. That is right.

Q. Have you also had prepared, Mr. Hoffman, a statement showing the number of automobiles on hand at Detroit at seven a. m. daily for the season of 1940 and 1941?

A. Yes, sir.

Q. With the number of cars at Shelby Street, which is the D. & C. dock, and also the number at Iron Street?

A. Yes, sir.

Q. Do you have that compilation before you?

181 A. Yes, sir.

Q. Has it been marked exhibit 26 for identification?

A. Yes, sir. That also covers the cars on hand at other docks in 1940, too, and in 1941.

Q. Those are all the docks from which automobiles moved on the Detroit & Cleveland Navigation Company and the T. J. McCarthy boats?

A. Yes, sir.

Q. Mr. Hoffman, have you also had prepared a statement showing the operations of the steamer George H. Ingalls, owned by the Automotive Trades Steamship Company, from October 2, 1936 through the season of navigation of 1939?

A. Yes, sir.

Q. Which paper for identification has been marked exhibit 27?

A. Yes, sir.

Q. And these documents were all prepared from the books and records of the two companies?

A. That is right.

Q. And under your supervision?

A. Yes, sir.

Mr. FOSTER. Mr. Examiner, we wish to offer exhibits 24, 25, 26, and 27 in evidence.

Mr. ELDRED. I would like to object until we have a chance to cross-examine the witness, particularly on exhibit 27.

182 Exam. MCGRATH. What is your objection?

Mr. ELDRED. On exhibit No. 27 I would like to know who this moved for, who these amounts moved for and under what conditions? I mean it is claimed that this is common carriage. There is no showing here.

Exam. MCGRATH. All right. Had you completed the direct examination?

Mr. FOSTER. Yes.

Exam. MCGRATH. All right, you may proceed with your cross-examination.

Cross-examination by Mr. ELDRED:

Q. Mr. Hoffman, will you turn to the exhibit marked for identification No. 27, the season of 1939, cargo No. 1: Will you tell me how that cargo was obtained and on what basis it was moved? On what bill of lading?

A. I had nothing to do with the obtaining of the cargo.

Q. I see.

A. These were from our office records on the movement of the boats and what they carried, where they moved from and to.

Q. When did you start your employment with Mr. McCarthy?

A. I believe it was in 1935.

Q. So would that answer be true insofar as all these movements are concerned on exhibit 27?

A. Yes, sir.

Q. You don't know how they were obtained or under

183 what conditions they moved?

A. That is right.

Mr. ELDRED. Mr. Examiner, I wish to renew my objection to the admission of this unless we have some further explanation of it.

Exam. MCGRATH. Will the applicants have a witness here qualified to answer questions such as those that were just put to the witness?

Mr. FOSTER. Mr. McCarthy has testified that he obtained these cargoes by general solicitation.

Exam. McGRATH. Perhaps he had better come on the stand and explain it.

Mr. FOSTER. He made that plain, that he solicited these and got cargoes from brokers, shippers, or whoever he could get them from.

Mr. ELDRED. Well, of course, if he will go back on the stand we will be able to clear that up.

Exam. McGRATH. Yes. Have you finished, Mr. Eldred?

Mr. ELDRED. That is all I have.

By Mr. LEWIS:

Q. Mr. Hoffman, will you refer to your exhibit No. 26?

A. Yes, sir.

Q. Do I understand your testimony to be that the automobiles shown on exhibit 26 are limited exclusively to automobiles which were carried on the so-called McCarthy boats?

184 A. No sir; they were carried on the D. & C. boats.

Q. But I understand you now to say that the numbers listed on exhibit 26 include automobiles which were carried both on the three McCarthy boats, that is, the "Mead," "Tremaine," and "Ingalls," and also on boats owned by the D. & C.?

A. This is a list of cars, the total number of cars that were available in the morning for movement to the various ports out of Detroit.

Q. And does it purport to show all automobiles available for transportation on any boats owned or chartered by the D. & C.?

A. Yes, sir.

Mr. LEWIS. Thank you.

By Mr. SULLIVAN:

Q. Mr. Hoffman, there has been an inconsistency in your statement. Once you said that these were the automobiles available and at another time you said they were the automobiles moved.

A. No; those were the automobiles on hand each morning. After everything was loaded those were the cars that were available at seven o'clock in the morning. We make a count each day.

Mr. SULLIVAN. That is all.

By Exam. McGRATH:

Q. You just added something new there, "after the boats were loaded." Did you mean to make that statement?

A. No, I did not. That was the count in the morning, at seven A. M.

185 Q. Does that mean that the automobiles were there ready to be loaded after seven o'clock?

A. Those were the automobiles available to be loaded at seven o'clock in the morning.

Q. When was loading done, after or prior to seven?

A. Any time in the day. Boats had no regular schedule. The freight boats had no regular schedule.

Exam. McGRATH. Any further questions?

Mr. LEWIS. Well, I would just like to ask this.

Q. Will you tell us from what source you obtained this information shown on exhibit 26?

A. From the D. & C. records.

Q. From the records of the D. & C.?

A. Yes.

Q. Now, what records do you refer to?

A. The on hand reports.

Q. They are not records that were kept separately by one or the other or both of the McCarthy companies?

A. No.

Q. And they are taken from the on hand records of the——

A. Which the D. & C. furnished us under our supervision, yes, sir.

Mr. LEWIS. That is all.

By Mr. EISEN:

Q. Mr. Hoffman, are these automobiles shown on your exhibits 24 and 25 as having been carried by the boats of T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company automobiles that were carried under the working relationship with the D. & C. that Mr. McCarthy testified to?

A. Yes, sir.

Mr. EISEN. That is all.

By Mr. ELDRED:

Q. Just one further question, if I may, Mr. Hoffman. In exhibit 26 the number on hand shown here at seven a. m. in the morning does not mean that all these cars were left over from the day before, does it?

A. Not necessarily. Some of them might have been there three or four days.

Q. Well, I mean could it be possible that some of those were added during the night or during the previous day?

A. They were counted up to seven o'clock in the morning. Whatever was there was counted.

Mr. ELDRED. Yes.

By Mr. FOSTER:

Q. In fact, Mr. Hoffman, it was quite customary to receive during the night?

A. It was; also Sundays.

Q. And Sundays?

A. Yes.

EXAM. MCGRATH. Any further questions on cross examination? Any questions on redirect?

MR. FOSTER. No.

187 EXAM. MCGRATH. Now do you want Mr. McCarthy to come back on the stand?

MR. ELDRED. That is up to him, if he wants to put him back on, but insofar as exhibit 27, I have to object to it.

EXAM. MCGRATH. All right. Perhaps we can answer the objection by having Mr. McCarthy come back on. You are willing to have Mr. McCarthy come back on, Mr. Foster?

MR. FOSTER. Yes.

EXAM. MCGRATH. All right. We will receive exhibits 24 to 26, inclusive, and reserve ruling on 27.

(Exhibits Nos. 24 to 26, inclusive, Witness Hoffman, received in evidence.)

T. J. MCCARTHY, recalled as a witness herein, having been previously duly sworn, was examined and testified further as follows:

Cross-examination (continued) by Mr. ELDRED:

Q. Would you refer to exhibit 27, Mr. McCarthy, to cargo 1 of the season of 1939? Would you tell me for whom that moved and how the movement was obtained?

A. I can tell you but I haven't got the record here with me. I probably called, or at least I know that I called Cleveland and Buffalo brokers and asked them if they had any cargoes available, but as to whose cargo that was, I cannot give you that at the present moment, but I can bring up the bills and the rest of it after lunch time, if you want it.

188 MR. ELDRED. Wouldn't that be best, Mr. Examiner, and save a lot of time?

EXAM. MCGRATH. Yes. Suppose you do that.

THE WITNESS. All right.

EXAM. MCGRATH. Do you want that on all of them?

MR. ELDRED. I think if we could have a fairly good showing in the year 1939, that is all I am particularly interested in, as far as I am concerned.

EXAM. MCGRATH. Will you undertake to do that, Mr. Foster?

MR. FOSTER. Yes.

Exam. McGRATH. All right.

Mr. FOSTER. I would just like, Mr. Examiner, to ask Mr. McCarthy the further question that this brings up.

Exam. McGRATH. Yes

Redirect examination by Mr. FOSTER:

Q. Now, Mr. McCarthy, on this particular steamer George H. Ingalls, during 1936, 1938, and 1939, when you were operating that vessel you went out and solicited general cargoes for that ship, did you not?

A. Yes, sir.

Q. Any place you could get them?

A. Any place I could get them.

Q. And you held yourself out generally to the type of public that could use that ship as ready, willing, and able to carry cargoes, is that right?

189 A. Yes, sir.

Q. And I see that in 1939 and 1938 that you carried quite a wide variety of cargoes.

A. Yes, sir.

Q. Now, you held yourself out to brokers and shippers generally that you had this vessel and were ready to move these cargoes anywhere on the Great Lakes?

A. Any cargoes that would be suitable for the ship any place on the Great Lakes.

Q. In other words, you were operating that vessel about as nearly as one could as a——

Mr. ALDRED. Well, now, Mr. Examiner, I think the witness is perfectly able to testify and I think the questions certainly have been leading, very leading on these points here.

Mr. FOSTER. This is direct examination.

Mr. ELDRED. That is all right. I still object. They are leading questions right along.

Mr. FOSTER. Which question are you objecting to now?

Mr. ELDRED. This last one.

Mr. SULLIVAN. This last one. You had some dynamite in that that did not explode yet.

Mr. FOSTER. Will you read the question referred to, Mr. Reporter?

(Question read.)

Mr. FOSTER. Is that what you are objecting to?

190 Mr. ELDRED. Yes.

Exam. McGRATH. As a what?

Mr. FOSTER. Just a minute. I ought to be permitted to finish the question before you object.

Mr. ELDRED. All right.

Mr. FOSTER. Isn't that customary?

Exam. MCGRATH. Yes, go ahead and finish the question.

By Mr. FOSTER:

Q. As a tramp steamer?

Mr. ELDRED. Well, now, I still object.

The WITNESS. Yes, yes.

Exam. MCGRATH. What do you regard as a tramp steamer?

Mr. SULLIVAN. A McCarthy boat.

The WITNESS. A tramp steamer would be—you call a tramp steamer one that is not assigned to any port, to any particular and definite trade working particularly for one shipper or one or two shippers but you might even get horse manure if you got the right rate and carry it and be glad to have it, or stones or bulk commodities suitable for dropping into open hatches and lifting out again. As a matter of fact, you could carry steel on that boat, package steel, but there was none offered and we couldn't get any.

By Mr. FOSTER:

Q. Did you solicit any?

A. Yes.

Q. And did you solicit pig iron?

A. Yes.

191 Q. You solicited a number of cargoes or types other than shown on the exhibit and which you were not able to obtain?

A. Yes, sir, anything that we could possibly get. The boat had been idle and worked only a part time and we were certainly trying to keep it working at anything that we could get to carry.

Mr. FOSTER. I think that is all.

Exam. MCGRATH. Any further questions?

Re-cross-examination by Mr. ELDRED:

Q. Now, what did you do with this boat in 1940, in the year of 1940 season of open navigation?

A. The steamer "Ingalls"?

Q. Yes.

A. We converted it into an automobile carrier in the season of 1940 and had it available for navigation and chartered it to the D. & C. in the spring of 1940.

Q. So you did not solicit any general cargo in the year 1940 for it?

A. No, we did not. We worked up enough automobile business to keep it busy.

Q. Now, take the year 1941, what did you do during that season?

A. She was chartered to the D. & C. Navigation Company and when they released her at the end of the season we obtained another cargo on our own account of grain to carry to Buffalo.

Q. I understood you made certain changes at that time,
192 did you, in the boat?

A. Yes, sir. She could not now carry automobiles unless we changed her back again. She is available for this same tramp trade or whatever the Government wants to use her for.

Q. Now, did the D. & C. have an option on the "Ingalls" for this season?

A. For this season? No; they did not.

Q. They did not?

A. No, sir.

Q. Do you have any rates at the present time, any tariffs published?

A. Yes.

Q. Other than automobiles?

A. No.

Q. How did you move this movement of grain? What was that moved under?

A. By contract agreement.

Q. Did you have any schedule of minimum charges?

A. No; there is no such thing on bulk cargoes of grain.

Q. Well, how about stone?

A. Whatever you can get; it is all contract.

Q. I see. And how is it, then, that you are stating that it is a common carrier operation if all of it is contract?

A. We are something and we are either a common or a contract and it is up to the Commission to tell us what we are
193 and we are putting in all we are going to claim until they tell us that we are not, because there isn't any ruling on it yet.

Q. Yes.

Mr. SULLIVAN. Everything what?

The WITNESS. Everything in the way of a common carrier.

By Mr. ELDRED:

Q. You didn't think, though, that the movement of the grain at the end of the—towards the close of the navigation season of 1941 was a common carrier movement?

A. No.

Q. Well, now, from——

Exam. MCGRATH. Why didn't you?

A. It is an exempt commodity anyway.

Q. Why is it exempt?

A. It is a bulk commodity. Those are exempted from any filings.

Q. As I understand your testimony you solicited the general public for that cargo and that you obtained grain as a result of

such solicitation. You held yourself out to transport grains for the general public, is that correct?

A. That is right.

Mr. FOSTER. That is in 1938 and 1939, Mr. Examiner. This cargo came from Canada in 1941.

Exam. MCGRATH. And you did not undertake to comply with the Maritime Commission requirements governing the publication of tariffs of common carriers of bulk commodities?

194 The WITNESS. No, sir.

Exam. MCGRATH. Any further questions of Mr. McCarthy?

By Mr. ELDRED:

Q. Would you consider, Mr. McCarthy, refuse screenings as a bulk commodity?

A. Yes.

Exam. MCGRATH. What kind of refuse was that, do you recall?

The WITNESS. Wheat refuse.

Exam. MCGRATH. Wheat refuse.

By Mr. ELDRED:

Q. And would you consider coal a bulk commodity?

A. A bulk commodity?

Q. Yes.

A. Oh, yes.

Q. And silica rock?

A. Yes.

Q. Would you know what the stone was which is considered in cargo 8 in the year 1938, moving stone from Buffalo to Toledo? Would you consider that a bulk commodity?

A. That would be a bulk commodity; yes, sir.

Q. Is it a fair statement that all the commodities which were moved in the "Ingalls" for the years 1936, 1938 and 1939 were bulk commodities?

A. I would say so. They were the only commodities I could get to carry.

195 Q. And there was a full boat load of the particular commodity? I mean there was only one commodity on the boat?

A. There may have been two or three kinds of grain.

Q. Of the grain?

A. Yes.

Q. I see.

Exam. MCGRATH. But that was the only instance in which there was more than one commodity to a cargo, is that right?

The WITNESS. I wouldn't know—no; there might be two or three different shippers of coal because we had compartments in there. It could be divided three times, or three ways. We had

three compartments. We might have three shippers of coal and that would be all coal. It might be some slag and some lump, one in one compartment and one in another.

Mr. ELDRED. No further questions.

By Mr. SULLIVAN:

Q. Mr. McCarthy, all the rates applying to these cargoes were strictly port to port, were they not?

A. Yes.

Q. You had no joint rates with rail carriers?

A. No, sir.

Mr. SULLIVAN. That is all.

By Exam. McGRATH:

Q. Or with motor carriers?

A. No, sir.

Q. Or water carriers?

A. No, sir.

196 Exam. McGRATH. That seems to be all. Have you any questions, Mr. Foster?

By Mr. FOSTER:

Q. Mr. McCarthy, you don't recall at any time during 1938 or 1939 transporting any commodities other than shown on these exhibits on this "Ingalls?" So far as you know that is all of the transportation on that vessel?

A. That is all of the transportation in that vessel, as far as I know.

Q. And this grain cargo that was handled last year, was that one type of grain?

A. That was one type of grain, throughout.

Q. What was it, wheat?

A. What.

Mr. FOSTER. We now offer exhibit 27.

Exam. McGRATH. I will receive it with the understanding that Mr. McCarthy will bring forward this afternoon representative bills of lading for shipments, the 1939 shipments.

Mr. FOSTER. If we have those here in the office we can have them here this afternoon.

Exam. McGRATH. All right.

Mr. FOSTER. If not, if we have to get them from the brokers, we will get them from the brokers but we will explain, anyway, Mr. Examiner, what the situation is this afternoon.

Exam. McGRATH. All right.

(Exhibit No. 27, Witness Hoffman, received in evidence.)

197 Exam. McGRATH. That appears to be all, Mr. McCarthy, from you at this time. We will recess until 1:30, gentlemen.

(Whereupon at 12:15 p. m., a recess was taken until 1:30 p. m. of the same day.)

AFTERNOON SESSION

(Whereupon, at 1:30 p. m., hearing resumed, pursuant to recess.)

Exam. McGrath. You may proceed.

Mr. Foster. Mr. Hoffman, will you take the stand, please?

William J. Hoffman, recalled as a witness herein, having been previously duly sworn, was examined and testified further as follows:

Direct examination by Mr. Foster:

Q. Mr. Hoffman, as General Freight Agent of the Automotive Trades Steamship Company and the T. J. McCarthy Steamship Company did you publish tariffs 1 to 9, I. C. C. numbers 1 to 9 for that company?

A. Yes, sir.

Q. For each of those companies?

A. Yes, sir; separate tariffs.

Q. Are those the tariffs of the Automotive States Company, or, rather, of the Automotive Trades Steamship Company?

A. Yes; they are.

Q. There are two sets there?

198 A. Two sets, yes.

Q. And are these the tariffs of the T. J. McCarthy Steamship Company?

A. They are.

Mr. Foster. We wish to offer those in evidence.

Exam. McGrath. Do you want to offer each set as one exhibit, is that what you want to do?

Mr. Foster. Yes.

Exam. McGrath. If you bind them together that would be all right. Does anybody want copies of those?

Mr. Eisen. Yes.

Mr. Lewis. Yes; surely we want copies.

The Witness. We have some extra ones.

Exam. McGrath. Well, the parties are entitled to copies if they want them.

Mr. Foster. I know they are. They generally do not ask for them because they already have them.

Exam. McGrath. Off the record.

(Discussion outside the record.)

Exam. McGrath. The Automotive tariffs will be designated and referred to as exhibit 28 and the tariffs of the T. J. McCarthy

Steamship Company will be designated and received as exhibit 29.
(Exhibits Nos. 28 and 29, Witness Hoffman, received in evidence.)

199 Mr. FOSTER. Mr. Sullivan, did you want to ask Mr. McCarthy any questions about those bills of lading?

MR. SULLIVAN. Yes, if you please.

T. J. McCARTHY recalled as a witness herein, having been previously duly sworn, examined and testified further as follows:

Further cross-examination by Mr. SULLIVAN:

Q. Mr. McCarthy, pursuant to the request made before adjournment this noon you produced this yellow sheet as the American form of 1936 lake grain bill of lading, have you not?

A. Yes, sir.

Q. And that is a copy of one actually used, is it not, dated November 30, 1939?

A. That is right.

Q. That is the form that was in effect in 1939 generally, was it not?

A. For grain.

Q. For grain?

A. Yes.

MR. SULLIVAN. I don't care to introduce this, Mr. Examiner, but I would like to read one paragraph of three lines, if you please, from this, it being the second paragraph:

"It is understood and agreed that with respect to this shipment the carrier and ship have not and do not hold
200 themselves out as transporting cargo for the general public and only transport cargo as a private carrier under private contract."

Redirect examination by Mr. FOSTER:

Q. In pursuance of that request, Mr. McCarthy, made by the Examiner before lunch did you also obtain from your files a copy of a bill of lading on which was transported a cargo of No. 2 lump coal during 1938?

A. Yes, sir.

Q. And a cargo of phosphate rock?

A. Yes, sir.

MR. SULLIVAN. What year?

MR. FOSTER. In 1939.

The WITNESS. Yes, sir.

Q. And are both of those the bills of lading?

A. Yes, sir; these are the bills of lading for the 2,800 gross tons of phosphate rock and 5,090 tons of Chilton 2-inch lump coal.

MR. FOSTER. Mr. Sullivan, you have examined these?

Mr. SULLIVAN. Yes, I saw those.

Mr. FOSTER. Are you willing to state that they have no such limitations as contained in the grain bill?

Mr. SULLIVAN. Yes.

Exam. MCGRATH. Are you going to introduce those into the record?

201 Mr. FOSTER. If you would like for us to we can introduce them.

Mr. SULLIVAN. I have no objection.

Exam. MCGRATH. I think it might be desirable. Have you got retained copies of them yourself?

Mr. FOSTER. Those are our only copies, taken right out of the file.

Exam. MCGRATH. Will anybody want a copy of those?

Mr. SULLIVAN. I won't.

Mr. EISEN. No, I won't.

Exam. MCGRATH. All right.

Mr. SULLIVAN. You are including the grain bill of lading also?

Mr. FOSTER. Yes.

Exam. MCGRATH. The grain bill of lading will be marked exhibit 30, the phosphate rock bill of lading 31 and the Chilton lump coal exhibit 32.

Mr. FOSTER. On the others, do you want to have those photostated and have us furnish copies?

Exam. MCGRATH. Well, if nobody wants them you don't need to do that.

Mr. FOSTER. Are you willing to let those go?

The WITNESS. That is all right. They are all paid for and no claim on them and nothing held out.

Exam. MCGRATH. I thought I asked you that first,

202 whether you were willing to let them go into the record without having retained copies of them.

Mr. FOSTER. That is all right.

(Exhibits Nos. 30, 31 and 32, Witness McCarthy, received in evidence.)

Re-cross-examination by Mr. SULLIVAN:

Q. Mr. McCarthy, on the second page of applicants' exhibit 27, where the commodities carried in 1939 are listed, all of those except stone therein moved on the grain bill of lading—would have moved on the grain bill of lading, would they not? The answer is "Yes," is it not?

A. Yes.

Mr. SULLIVAN. That is all.

Exam. MCGRATH. Any further questions?

Mr. ELDRED. Yes.

Q. Mr. McCarthy, the movement; I believe it is of phosphate rock, on the bill of lading which has been identified as exhibit 31, that is indicated on exhibit 27 as stone, is it not?

A. Yes.

Q. Now, would you refer to that exhibit 31, Mr. McCarthy? Does the Automotive Trades Steamship Company or the T. J. McCarthy Steamship Company appear as a party to that bill of lading?

A. On board the steamer "George H. Ingalls," Boland &
203 Cornelius agents for the steamboat. No.

Q. Who paid you for that transportation, Mr. McCarthy?

A. Boland & Cornelius.

Exam. McGRATH. Is that true likewise of the bill of lading covering the shipment of coal, Mr. McCarthy?

A. I would have to refer to our document on that. Boland & Cornelius are not shown here as the agent—I beg your pardon; that is right, they are. I would say that it is true in this case, too.

By Mr. ELDRED:

Q. Is that also true of the grain movement?

A. Boland & Cornelius' name does not appear on here.

Q. Doesn't it?

A. Oh, yes; I am sorry, it does appear. Yes, that is true of that also.

Exam. McGRATH. Well, will you explain for the record what functions were performed by Boland & Cornelius in connection with those shipments?

A. They were the people whom I solicited for cargoes, who obtained the cargoes for us.

Q. What business were they engaged in?

A. They are in the steamboat business also and brokerage business.

By Mr. SULLIVAN:

Q. But that bill was issued in the course of their brokerage business, wasn't it?

A. I suppose you would say it was. I couldn't tell you.
204 Q. Well, they didn't operate your ship, did they?

A. No; they didn't operate the ship.

Q. You asked them to get a load for you, didn't you?

A. Yes, sir.

Q. They got a load and they signed that bill of lading and you carried the grain?

A. That is right.

Q. And you paid them the freight—they paid you the freight?

A. Yes.

Exam. McGRATH. Did you pay them a commission for doing that work?

The WITNESS. Yes.

By Mr. SULLIVAN:

Q. Are you sure you paid them that commission?

A. Yes. It works both ways sometime.

Mr. FOSTER. The grain fellow pays the money and then they get a fee for each vessel?

The WITNESS. Yes.

By Mr. ELDRED:

Q. Was the boat chartered outright or were you paid on the basis of so much a ton, Mr. McCarthy?

A. So much a ton or so much a bushel, whichever the case may be.

Q. Who paid for the insurance on these cargoes?

A. The owner of the goods.

Q. Of the commodity?

A. The owner of the commodity.

205 Q. In all instances?

A. If they were insured.

Q. Yes. In other words, you carried no insurance?

A. I carried no insurance on the cargo.

Exam. McGRATH. Any further questions on cross-examination?

Mr. ELDRED. Nothing further.

Exam. McGRATH. Have you any questions, Mr. Foster?

Mr. FOSTER. Just a couple on redirect.

Redirect examination by Mr. FOSTER:

Q. During all of the time shown on this exhibit 27, covering operations of the steamer "Ingalls," you paid all costs of operation of the vessel, such as crew's wages, coal, provisions, hull insurance and every other expense of every kind and nature in connection with the operation of the ship?

A. Yes, sir.

Q. And you directed the movements of the ship?

A. Yes, sir.

Q. Now, it is customary for brokers who procure cargoes for a ship to charge a fee for that?

A. Yes; they do.

Q. And where cargoes were procured by outside vessel agents or brokers, such as Boland & Cornelius, they did charge you a fee for procuring that cargo?

A. Yes, sir; they did.

206 Mr. FOSTER. That is all.

Exam. McGRATH. Any further questions? That appears to be all. Exhibits 30 to 32, inclusive, have already been received in evidence.

Mr. FOSTER. I call Mr. Hern.

E. J. HERN was sworn and testified as follows:

Direct examination by Mr. FOSTER:

Q. State your name and address, Mr. Hern.

A. E. J. Hern; Ford Motor Company; Dearborn.

Q. Are you connected with the Ford Motor Company, Mr. Hern?

A. Yes, sir.

Q. And in what capacity?

A. Assistant traffic manager.

Q. And as such do you have anything to do with the transportation of automobiles by water on the Great Lakes?

A. I do.

Q. And in your capacity as assistant traffic manager are you familiar with the transportation of automobiles by water on the Great Lakes?

A. Yes, sir; in every respect.

Q. Do you know generally the capacity of the automobile carriers to serve the public?

A. Yes, sir.

Q. Who are the principal companies engaged in the 207 transportation of automobiles on the Great Lakes?

A. Well, the ones we are principally interested in are Nicholson Universal and D. & C.

Q. They operate on Lak Erie?

A. That is right. We handle very little traffic for Lake Michigan or Lake Superior.

Q. Now, Mr. Hern, is the production and, consequently the shipment of automobiles highly seasonal?

A. Very much so.

Q. And during the past few years when has been the peak period for shipping automobiles on the Great Lakes?

A. It generally starts along about October—September, and October. It will continue through till about March, April, as a general rule.

Q. And is it customary that in the middle of the summer, which is the middle of the navigation period on the Great Lakes, that there is a lull in the shipment of automobiles?

A. Very definitely.

Q. And why is that?

A. Well, it is the end of one model and just before the production of the new model.

Q. And in consequence the factories generally are shut down for change-over?

A. That is right.

Q. From a period of four to six weeks?

208 A. Exactly.

Q. Mr. Hern, have you examined applicants' exhibits 24 and 25?

A. Yes, sir; I did.

Q. Now, on exhibit 25 it is shown that during the season of 1941 that there was moved on the vessels of the Automotive Trades Steamship Company, T. J. McCarthy Steamship Company, and the Detroit & Cleveland Navigation Company a total of 120,203 automobiles and of that number 85,493 were moved on the automobile vessels of the Automotive Trades Steamship Company and the T. J. McCarthy Steamship Company. Now, I will ask you from your knowledge of the manner in which automobiles were moved on Lake Erie during the peak periods of the past season if it would have been possible to have moved that 85,493 automobiles on the vessels of the other companies operating on Lake Erie?

A. I would say no; definitely not.

Q. And what do you base that opinion on, Mr. Hern?

A. On the available equipment and the fact that all the factories started to produce at about the same time. They all throw their cars in. Their dealers, of course, are short, having run out of stock.

Q. And it would be your opinion, then, that under normal conditions on the Great Lakes that the other carriers could not move the automobiles which had been formerly moved on the boats of the two applicants in this case?

A. I would say no.

209 Mr. FOSTER. I think that is all.

Exam. McGRATH. Cross examine.

Cross-examination by Mr. EISEN:

Q. Mr. Hern, is your company making automobiles at the present time?

A. Not passenger cars. Trucks we are.

Q. Are you shipping those trucks by water?

A. No sir.

Q. Is there any need at the present time, insofar as your company is concerned, to ship automobiles by water on Lake Erie—strike that question. Is there any need at the present time, insofar as your company is concerned, for any boats at all in operation on the Great Lakes to carry automobiles?

Exam. McGRATH. You mean during the season of open navigation?

By Mr. EISEN:

Q. During the season of open navigation.

A. Well, of course, that is something I cannot very well answer for next year.

Q. Have you any idea when your company will again be producing automobiles?

A. No, sir; and I don't think anybody else has.

Q. So there is no immediate prospect of any use for automobile boats, in your opinion?

A. Unless there is some change in the situation.

Q. Now, does it make any difference to the Ford Motor
210 Company whether these three boats that T. J. McCarthy owns are operated by the D. & C., by Nicholson, by T. J. McCarthy, or by anyone else in the automobile trade?

Mr. FOSTER. Mr. Examiner, I object to that question as wholly irrelevant, incompetent, and immaterial. I mean the record shows that none of these people have any right to operate them. I can't see where that has any possible bearing on this case. The D. & C. did have charters on them and asked to be released. I can't see the pertinence of that question at all.

Mr. EISEN. Mr. Examiner, all the application asks for is the right to continue interim operations. The interim operation was a charter operation, as I understand it. Therefore, the question I am putting to the witness goes right to the very essence of the application.

Mr. FOSTER. The application is for——

Mr. EISEN. Continuance of interim operating rights.

Mr. FOSTER. It is for an absolute certificate to operate.

Mr. EISEN. The order is very clear, so is the application that the applicant filed.

Mr. FOSTER. Well, the application is in that form because that is the only form that they provided but this is an application for convenience and necessity

Mr. EISEN. There are three different types of applications: One for a new service, and that one was not filed in this case.

211 Exam. MCGRATH. He may answer.

The WITNESS. Naturally we are interested in moving the units and we have been very successful working through Mr. McCarthy and we see no reason for making any change in the situation.

By Mr. EISEN:

Q. Well, let me ask you this: Is it your position that your company wants adequate boats operated by the existing carriers or is it your position here that you want T. J. McCarthy in the picture irrespective of how many boats there are?

A. We are definitely interested in moving the units regardless.

Q. So that if when automobiles are again produced there are sufficient boats made available by the existing carriers——

A. That is right.

Q. That situation would be fully satisfactory?

A. That is right.

Mr. EISEN. That is all. That is all I have.

Exam. MCGRATH. Any further questions on cross-examination?

Mr. ELDRED. None on my part.

Mr. SULLIVAN. I have none.

Exam. MCGRATH. Any questions on redirect?

Mr. FOSTER. Just a moment.

Redirect examination by Mr. FOSTER:

212 Q. You know, Mr. Hern, of your own knowledge that the facilities that have been provided in the past that have enabled you to move these units have been provided by Mr. McCarthy, have they?

A. Definitely. It was through his efforts that the space was provided.

Q. Yes. Now, the space never was provided by the Detroit & Cleveland Navigation Company prior to Mr. McCarthy going there, was it?

A. Definitely not.

Q. And do you know of your own knowledge that it was necessary, as Mr. McCarthy testified here this morning, that he provide these additional automobile carriers?

A. I know that of my own knowledge.

Mr. FOSTER. I think that is all.

Mr. EISEN. I have one question on that redirect.

Re-cross-examination by Mr. EISEN:

Q. When you shipped cars on these boats what bills of lading did you execute—T. J. McCarthy bills of lading?

A. No, sir; regular bills of lading.

Q. What was the carrier?

A. What do you mean?

Q. What carrier's bills of lading did you execute? Via what line did you show on your bill of lading?

A. D. & C., Nicholson, whichever it happened to be.

213 Q. Well, when you used the D. & C. you specified D. & C. as the carrier?

A. Definitely.

Q. And when you use McCarthy's boats you specify D. & C. as the carrier?

A. Definitely.

Q. Then the D. & C. was the one that was providing the transportation insofar as you were concerned?

A. That is right.

Mr. EISEN. That is all.

Exam. MCGRATH. Any further questions?

Mr. FOSTER. No further questions.

Exam. MCGRATH. That appears to be all, Mr. Herb. You are excused. Next witness.

N. J. BRENNAN was sworn and testified as follows:

Direct examination by Mr. FOSTER:

Q. Mr. Brennan, would you give us your name and home address?

A. N. J. Brennan; traffic manager, Chrysler Corporation; Detroit, Michigan.

Q. How long have you been connected with the Chrysler Corporation in that capacity?

A. Five years.

Q. And in that capacity, Mr. Brennan, do you have
214 general charge over the shipment of automobiles by water on the Great Lakes?

A. I do.

Q. And are you familiar with the transportation on the Great Lakes by water?

A. I am.

Q. I will ask you, Mr. Brennan, if up until the season of 1940 a large number of automobiles were transported on the deck of what is known as bulk carriers?

A. A very large number of them were, yes; that is true.

Q. And was that transportation primarily to the upper lakes, that is, Lake Michigan and Lake Superior?

A. That is true.

Q. And I understand that that was discontinued generally for the season of 1941, with the exception of the boats that were under charter or under the management of the Nicholson Universal Steamship Company.

A. That is correct.

Q. And how did that affect the transportation of automobiles to the upper lakes, Mr. Brennan?

A. Well, it had a considerable effect. When we heard that the movement was going to be discontinued on the decks of the ore carriers——

Mr. ELDRED. Now, Mr. Examiner, I believe that that is territory outside the scope of the instant application.

215 Exam. MCGRATH. What is the materiality of that line of questions? It is not apparent to the Examiner, Mr. Foster.

Mr. FOSTER. Well, Mr. Examiner, the materiality of it is, the present carriers necessarily had to withdraw vessels that were formerly in the other service to service the upper lakes.

Exam. MCGRATH. The applicants here are not seeking the authority to operate to the upper lake ports.

Mr. FOSTER. No; but we want to show that as the result of the discontinuance of these bulk carriers it is even more essential that this applicant be given operations on Lake Erie because they have had to put vessels which were formerly in this service in the upper lake service because of the discontinuance of the bulk carriers.

Exam. MCGRATH. Is that the purpose of it?

Mr. FOSTER. That is the purpose of it and the fact that they have actually not been able to take care of the traffic offered.

Mr. ELDRED. Well, now, Mr. Examiner, this is not a new service application, according to the hearing order of the Commission and also by the application itself. This is to continue the interim operations, and I respectfully request that we ought to restrict the testimony to that.

Mr. EISEN. The testimony should go to the necessity of continuing the operations of this applicant as and between
216. January, 1940 and February 1, 1941; that is all the hearing is called on.

Mr. FOSTER. It will be confined to that.

Exam. MCGRATH. All right, proceed.

The WITNESS. Well, we felt definitely that there would be a shortage of transportation by water on the Great Lakes no matter whether it was to Lake Superior or Lake Michigan or Lake Erie; that those carriers had transported a large volume and if they went out of the picture it would mean that there should be some more boats come in that would be the definitely automobile boats, for the reason that something would have to take the place of those ore carriers to carry the traffic or boats would have to be diverted from Lake Erie to take care of the Duluth and Milwaukee traffic and we felt that if this was done we would not have service on Lake Erie and if we did not get some more boats into Lake Superior we would not have service in there and in the winter of 1940 I made arrangements—started the arrangements with another company to see if they could not serve our dealers at Duluth and in the Twin Cities with some boats they had that were not then in the automobile trade, in order that the boats in Lake Erie would be conserved for that purpose and we found out in the last season of 1941 that even so the service into Milwaukee and Green Bay was very poor. In fact, near the end of the season, I think it
217 was in September, the service was discontinued completely to Milwaukee and all that territory. We had a great num-

ber of automobiles at times laying on the docks, waiting for a boat to take them to Milwaukee and Green Bay.

Exam. McGRATH. We are not concerned in this proceeding with any transportation to Milwaukee.

The WITNESS. I beg your pardon.

Exam. McGRATH. How was transportation between the Lake Erie ports affected, between Detroit and the Lake Erie ports?

The WITNESS. It certainly was not to our satisfaction, Mr. Examiner.

By Mr. FOSTER:

Q. And you attribute that, Mr. Brennan, partially, to the fact that these bulk carriers had been withdrawn and it was necessary to run regular automobile boats to the head of the lakes?

A. That is right.

Q. Now, do you have a summary, Mr. Brennan, of the automobiles that were handled by the various lines, that is, Chrysler automobiles that were handled by the various lines during the season of 1941?

A. I have.

Q. Do you have that with you?

A. Yes. I have it for several years.

Q. How many automobiles were handled last year, how many Chryslers automobiles by the Nicholson Universal Steamship Company?

218. A. Nicholson Universal Steamship Company, 116,583.

Mr. EISEN. To where, can you tell us that?

The WITNESS. Do your want it divided as to ports?

Mr. EISEN. I just want to know what you are giving.

The WITNESS. That is the total number of automobiles handled by the Nicholson Universal Steamship Company during the season of open navigation of 1941, Chrysler cars.

Mr. EISEN. To all ports?

The WITNESS. That is right.

Mr. EISEN. I thought you were confining that——

Exam. McGRATH. How many of those were transported to Lake Erie ports?

The WITNESS. There were 70,754 to Buffalo, New York and 33,317 to Cleveland and none to Erie, Pennsylvania.

By Mr. FOSTER:

Q. How many were handled by the Detroit & Cleveland Navigation Company? How many on Lake Erie?

A. 47,949 to Buffalo; 5,678 to Cleveland and 1 car to Erie. I don't know how that got there.

Q. And, Mr. Brennan, do you know whether or not during the peak production in the transportation of automobiles that all of the companies transporting automobiles were operating at virtual capacity?

A. Yes, I would say they were.

Q. And what do you base that on?

Exam. McGRATH. Now, what companies do you refer to
219 now—railroads, motor carriers, that is, over the highway motor carriers?

Mr. FOSTER. I mean water carriers.

The WITNESS. I understood him to mean water carrier. I have reference to water carriers. Well, the fact is that during the peak of the season we found our cars lying on the docks here at Detroit longer than we thought was necessary. In fact, we were after the steamship companies all the time to get them moving and we get a record from every steamship line every morning showing what they have moved and how long the automobiles are on hand and they seemed to be on hand longer this year for Lake Erie than they have in several years.

Q. Was it necessary at some time during the season for you to divert automobiles from one carrier to the other?

A. Yes; we diverted automobiles from the D. & C. in June.

Q. To whom?

A. To the Nicholson Universal.

Q. And during 1941 did you at any time divert automobiles from the Nicholson Universal to the D. & C.?

A. Yes, we did.

Q. What was the cause of you having to make that diversion?

A. Well, we could not allow our cars to be sitting around the docks. We didn't want them stored in lots. And, naturallly, if we can't get rid of our automobiles fast and promptly we either have to find another mode of transportation or shut
220 down our lines, because we do not have room enough in our plants to store over—that is, in most of the plants, over two days' production.

By Exam. McGRATH:

Q. What plants are you speaking of now?

A. I am speaking of the Dodge passenger car, the Plymouth passenger car, the Chrysler passenger here, the Chrysler passenger car, DeSoto passenger car and Dodge trucks.

Q. Located at what points?

A. In the City of Detroit.

By Mr. FOSTER:

Q. All of the principal Chrysler factories are located in the Detroit area?

A. That is right, with assembly plants at Evansville, Indiana, and Los Angeles, California.

Q. Have you examined applicants' exhibit 25?

A. Yes, I have looked that over.

Q. Now, from your knowledge of the situation as it existed in 1941, Mr. Brennan, I will ask you whether or not in your judgment it would have been possible for the other water carriers on Lake Erie to possibly have transported the 85,493 cars which were transported on the boats of the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company?

A. Not at the peak seasons.

Q. And under normal conditions, assuming that 1942 had continued *it* had been similar to 1941—

Mr. EISEN. I object to that.

221 Mr. ELDRED. I object to that question.

Mr. EISEN. It is highly speculative.

Mr. FOSTER. Why, no. I think we have got to do that. I mean this war thing has changed the whole picture. I think it is perfectly pertinent. We certainly are not going to decide these rights on the theory that there is bound not to be any cars produced.

Mr. EISEN. We still have to find out that 1941 was a normal year and one that will be repeated. That has not been developed yet.

Exam. MCGRATH. Isn't that highly speculative in view of the present situation?

By Mr. FOSTER:

Q. I will ask you, Mr. Brennan, whether or not so far as Chrysler is concerned if 1941 was the largest automobile year that you had in transportation by water?

Mr. EISEN. Oh, I object to that.

The WITNESS. No; it was not.

By Mr. FOSTER:

Q. Would you say that there was anything particularly abnormal about 1941 so far as production of automobiles was concerned?

A. Well, it was one of the large years.

Q. It was one of the large years?

A. Yes. There were several other years that touched its capacity.

Q. And the production of automobiles does fluctuate from

222 year to year, to some extent?

A. Oh, yes, that is true.

Mr. FOSTER. I think that is all.

Exam. MCGRATH. Cross-examine.

Cross-examination by Mr. EISEN:

Q. Mr. Brennan, you gave us the figures, automobile figures of the D. & C.?

A. Yes.

Q. Can you tell us what proportion or how many of those were McCarthy's from your records, that were carried on McCarthy boats, I should say, from your records?

A. No, I couldn't tell you that.

Q. As far as you were concerned the D. & C.'s operation included the McCarthy boats?

A. That is right.

Q. Is your company making automobiles now?

A. No. I wish we were.

Q. Do you have any idea when you will go back to automobile production?

A. I haven't the slightest idea. We expect to go back some day.

Q. Do you have any idea how long after you go back to production that you will reach the productivity that you had in 1941?

A. The general consensus of opinion is it will the very first year go beyond anything we have ever had.

223 Q. Do you think when you go back at the termination of the war you will go into automobile production a hundred percent or do you think you will still continue your armament production to some extent?

Mr. FOSTER. Now, Mr. Examiner, I am objecting to this as highly speculative and wholly immaterial also.

Exam. MCGRATH. I cannot see the relevancy of that.

Mr. FOSTER. I cannot even see the relevancy.

Exam. MCGRATH. Is the witness qualified to answer that?

The WITNESS. I don't think anybody in our corporation knows.

Mr. EISEN. That is just it, that is just the point I want to develop, that he does not know.

Exam. MCGRATH. Well, he shook his head and that indicated he did not know.

The WITNESS. I say "No."

By Mr. EISEN:

Q. While the company is in a state of nonproduction of automobiles there is no need, as you see it, for automobile boats operating on the lakes, is there?

A. They would not operate. They wouldn't have anything to operate with.

Q. If they didn't have anything to operate with there wouldn't be any need for additional carriers in the field, would there?

A. Not at the present time.

Q. Now, you spoke about during the peak period of
224 that the automobile facilities were running to capacity?

A. That is right, at a certain time.

Q. As to boats. Now, weren't the truck convoys running to capacity as well during those peak seasons?

A. Yes, I think so. I think our records will indicate that the trucks on a percentage basis got a little more business in 1941 than the boat lines and the rail lines did.

Q. Well, is it your opinion that there is inadequate automobile convoy facilities at the present time and that those facilities should be increased by additional carriers?

Mr. Foster. Now, just a moment. I object to that, Mr. Examiner, as wholly immaterial, incompetent and irrelevant.

Exam. McGrath. Objection sustained.

Mr. Foster. No possible bearing.

Mr. Eisen. I want to except to that.

Mr. Foster. You want to what?

Mr. Eisen. I want to take an exception to the ruling.

Mr. Eldred. Well Mr. Examiner, might I just ask here, do we understand, then, that at these hearings we will not be able to show the services of other forms of transportation?

Exam. McGrath. Are you representing the railroads and motor carriers?

Mr. Eldred. Not rail.

Exam. McGrath. That question went to the adequacy of the over the road motor carriage of automobiles. I don't think
225 that issue is before the Commission here per se.

Mr. Eisen. Well, isn't it a fact that in a public convenience and necessity case the Commission takes cognizance of other transportation facilities?

Exam. McGrath. Well, I think we must misunderstand one another. Your question, as I understood it, was directed to finding out whether these over the road motor carriers had adequate service in themselves, irrespective of water carrier service.

Mr. Eisen. Oh, no; directly tied.

Exam. McGrath. Is that the way you understood the question?

The Witness. Yes.

Exam. McGrath. Well, all right, clear the question up. Clarify it and let us understand what you want.

By Mr. Eisen:

Q. With respect to the motor convoys out of Buffalo that worked in conjunction with the boat lines, were they taxed to capacity?

A. Yes; for the reason that the automobiles would come here on the dock and then on a week end there were so many boats

left here for Buffalo they dumped them all over in there and they did not have the capacity for taking them away promptly.

Q. In other words, the boats brought them in there faster than the trucks could take them out?

A. At times; yes.

Q. May I ask you, Mr. Brennan, if you are testifying on behalf of T. J. McCarthy or Automotive Trades or both?

A. I am testifying on behalf of the Chrysler Corporation.

Q. Well, for Automotive Trades?

A. That is correct.

Q. And T. J. McCarthy?

A. That is correct.

Q. Now, if T. J. McCarthy chartered its boats to the D. & C. in the first year of operation, these same boats, would that satisfy you?

Mr. FOSTER. Just a moment, now. Mr. Examiner, I object to that as wholly incompetent, irrelevant and immaterial, as to what somebody will do with somebody else, as to whether it will satisfy Mr. Brennan some years hence.

Mr. EISEN. That is all the application is for, as I understand it, is to charter the boats.

Exam. MCGRATH. Read that question, Mr. Reporter.

(Question read.)

Exam. MCGRATH. In the first year of operation?

Mr. EISEN. In the first year of operation after the duration, would that satisfy you?

Mr. FOSTER. I can't see where, Mr. Examiner, that has any possible bearing in this case.

Exam. MCGRATH. It is very speculative, it seems to me.

Mr. EISEN. Mr. Examiner, am I wrong in my understanding that all this case is is an interim operating case? That is what the Commission's notice and the applicants' application is. Now, if all McCarthy and Automotive did during the interim period was charter boats, that is all they are asking the right to do. Now, I am not objecting to that. I am trying to find out what this witness wants.

Mr. FOSTER. We wouldn't even have to ask the right to charter our boats to another common carrier.

Mr. EISEN. Well, I know.

Exam. MCGRATH. Answer the question.

The WITNESS. I will answer it by saying no and I will qualify it by saying that all of our dealings have been with Mr. McCarthy and Mr. Hoffman. It was not until within the last year that the D. & C. ever called on us even soliciting automobiles. While it bore the name of the D. & C. we always considered it McCarthy's opera-

tion and we had all our dealings with him in every way, operation and rates and everything else.

By Mr. EISEN:

Q. Then you would not care how many boats the D. & C. made available to you; your only interest is in having Mr. McCarthy operate on the lakes?

Mr. FOSTER. Mr. Examiner, that question is wholly immaterial.

Mr. EISEN. No; it is not.

Mr. FOSTER. And I object to it.

Exam. MCGRATH. It is argumentative.

Mr. FOSTER. Of course it is.

228 Exam. MCGRATH. And the objection to that is sustained.

Mr. EISEN. I want an exception to that.

Exam. MCGRATH. Very well.

By Mr. EISEN:

Q. Mr. Brennan, is it still your position, as indicated to the Commission in connection with these new operation rights, that you favor transportation only to the extent that it is necessary and not to the extent that it is surplusage?

A. We do not believe in wasteful transportation.

Q. Now, isn't it a fact that the conditions you speak about in 1941 occurred during a year (1) that had the greatest automobile production for many, many years; and (2) a year in which there was an unavailability of water tonnage because of the war?

A. No.

Q. It was not?

A. No. We handled many more cars by water in 1937 than we did in 1941. We handled 225,774 cars in 1937 on the Great Lakes.

Q. Was there any war in 1937?

A. Yes. It was not here. There was in Japan.

Q. Was there any requisitioning by this government of all available water facilities in 1937?

Mr. FOSTER. Just a moment. There is no showing that there has been such at any other time and we object to that as immaterial.

Mr. EISEN. Mr. Examiner, the Commission——

229 Exam. MCGRATH. Objection sustained.

Mr. FOSTER. Yes.

Mr. EISEN. The Commission will not take judicial notice of the fact and of the evidence that the Maritime——

Exam. MCGRATH. You are not asking the Commission to take judicial notice. You are asking the witness to answer a question of that kind.

Mr. FOSTER. "If you know all the boats that were operating and hauling automobiles were requisitioned?"

Mr. EISEN. I did not ask him that at all.

Q. Now, you said you diverted cars from the D. & C. to Nicholson and from Nicholson to D. & C. when they were tied up on either company?

A. Yes; there would be congestion on their docks and we diverted cars before they went to their docks.

Q. So that between them the two companies moved your automobiles?

A. Not satisfactorily.

Q. Did you use the Great Lakes Transit?

A. I don't know whether we did into—yes; we had 6,234 cars for Buffalo, that is all; none for Cleveland.

Mr. EISEN. That is all I have.

Exam. MCGRATH. Any further questions in cross-examination?

Mr. ELDRED. Yes.

230 By Mr. ELDRED:

Q. Mr. Brennan, what is it that you are seeking here that you do not already have?

A. I am not seeking anything that I haven't already got.

Q. What is the purpose of your testimony? What are you asking the Commission to do?

A. I want these boats retained in the service for the future.

Q. I see. In what way, sir?

A. So they will carry our automobiles when we get back to making automobiles.

Q. Well, is it your position that the Commission could prevent these boats from being used during the period that there are no automobiles to be transported?

A. I don't think it would be their intention to. I wouldn't want to.

Q. What is it then? I mean, I cannot see what you want here that you do not already have. What are you asking for here that you do not already have here?

A. I am asking that the boats be retained in the service for the future when we come back. I don't say that they are not running now but some day they are going to run and they are available for hauling automobiles and that is what we want them for.

Q. Well, in what way do you want the Commission to do that?

A. The way the applicant wants it done. We are here supporting his application.

231 Q. Well, you feel then, as I understand it, that if this application is granted, if this applicant is granted the right, that the boats will come back into this service no matter what happens to them in the meantime, is that your position?

A. I don't know whether they will come back or not. We hope they will; that is why we are here.

Q. Well, I am still not clear. Can you express any way that the Commission can insure these boats coming back? Even if they grant this application, will that do it?

A. I think that question is irrelevant, isn't it?

Mr. Foster. I don't see what bearing these questions have. I have been trying to follow Mr. Eldred's line quite for sometime, Mr. Eldred's line of questions, if he thinks that the I. C. C. can tell someone they have got to put these boats back.

Exam. McGrath. The applicants are seeking certain operating rights.

Mr. Foster. Certainly they are, under the Interstate Commerce Act, Part III.

Mr. Eldred. Yes, but I mean hasn't he already got all these services at the present time that he needs? These boats have been in service up to the limit of their capacity.

Mr. Foster. Mr. Eldred, do you forget that this morning it was brought out that these boats were no longer under charter to the D. & C. and Mr. McCarthy is no longer soliciting for the D. & C.?

232 Mr. Eisen. And did you forget, Mr. Foster, that there is no further automobile production?

Exam. McGrath. Any further questions?

Mr. Eldred. No further questions.

By Mr. Lewis:

Q. In your opinion, Mr. Brennan, which you gave to the effect that some 85,000 automobiles which were carried in the navigation season of 1941 on the boats of the D. & C., that is, the boats owned or that were operated by the D. & C., included the McCarthy charter boats, you stated, as I understand it, in your opinion, that that 85,000 of automobiles could not have been transported by the facilities of the other carriers had the McCarthy boats not been available?

A. That is correct.

Q. That is what you stated?

A. Yes.

Q. Is that based on the assumption that the other carriers had exactly the same transportation facilities that they now have?

A. No; because before Nicholson—before the shipping season stopped Nicholson had already converted, I think, one or two of their automobile boats.

Q. So you based it on the assumption that the other carriers would have no more transportation facilities available than they now have, is that true?

A. That is true and they had at the peak of the season, one month in June, for instance, they had their boats all
233 operating and, as I testified awhile ago, neither they nor the D. & C. handled our automobiles prompt enough to suit our satisfaction.

Q. But if these other carriers did have additional transportation facilities there is no reason in the world why they would not be able to handle, in your opinion, the additional 85,000 of automobiles, is there?

Mr. FOSTER. Just a moment. I object to that, Mr. Examiner. It is wholly speculative. It has not been shown that they have those facilities.

Mr. LEWIS. Well, his entire opinion is speculative, then, and hypothetical.

Exam. MCGRATH. He may answer.

The WITNESS. Well, I don't know whether there would be any other boats on the lakes, where you could secure any other boats on the lakes, so I don't see how you could have increased their capacity.

By Mr. LEWIS:

Q. I am assuming that.

A. I am not assuming they would.

Q. Assuming that there were other boats available and they were in the hands of the other carriers, is there any reason why they couldn't have handled it that you know of?

A. If you have enough transportation you can handle any transportation.

Q. Very well. Now, you say that these boats which you
234 are very much interested in having retained in the service—which boats do you mean? Do you know them by name?

A. The "Ingalls" and "Mead" and the "Tremaine."

Q. Well, you know it is a fact, don't you, that the "Ingalls" is not now carrying automobiles?

A. That is true.

Q. So that particular boat is out of consideration, isn't it?

A. It could be reconverted very quickly.

Q. Yes. Well, is there any special reason why the "Ingalls" or the "Tremaine" or the "Mead" should be used if there are other boats, three others, we will say, that have the same automobile carrying capacity available?

A. We are going to go on what we have got today.

Q. I say but if there are some others available are you still insistent on having those three boats?

A. Why, certainly.

Q. You are?

A. Yes.
Q. You want those three and none others, is that it?
A. I want those three and more.
Q. Why do you want those three and none others?
A. Because they are the only ones available today.
Q. Well, I am asking you if there are some others available would you still insist on having those three?
A. Yes; certainly.
235 Q. And is that because of your friendship with Mr. McCarthy?
A. No, sir.
Q. I see.
A. That is to protect the Chrysler Corporation's interest.
Q. Would it be satisfactory if those three boats were operated by the D. & C.?
A. As I testified before I think it is a highly specialized means of transportation; it takes people with experience, and as far as we know the experienced people is Mr. McCarthy. Now, if the D. & C. had somebody just as efficient to operate it wouldn't make any difference to us.
Mr. LEWIS. That is all.
Exam. McGRATH. Any further questions on cross examination? Any questions on redirect?

Redirect Examination by Mr. FOSTER:

Q. All of your dealings, so far as these vessels are concerned or the D. & C. are concerned, were with Mr. McCarthy and Mr. Hoffman?
A. That is true, with the exception, I think, of a visit by Mr. Gordon.
Q. Was he soliciting automobiles?
A. Yes.
Q. When was that?
A. Or Mr. Arnold, I mean; not Gordon.
Q. How *recent* was that, Mr. Brennan?
236 A. Oh, it was last summer sometime.
Mr. FOSTER. I think that is all.
Exam. McGRATH. All right, you are excused, sir. Next witness.

W. H. RIVETT was sworn and testified as follows:

Direct examination by Mr. FOSTER:

Q. Will you state your full name?
A. W. H. Rivett.
Q. And your residence, Mr. Rivett?
A. 5548 Grayton, Detroit.
Q. And with whom are you connected, Mr. Rivett?

A. Hudson Motor Car Company.
Q. And in what capacity?
A. In the traffic department.
Q. What is your position in the traffic department?
A. Assistant to the traffic manager.
Q. How long have you been in the traffic department of Hudson's?
A. About 16 years.
Q. And in your position in the traffic department of the Hudson Motor Car Company have you become generally familiar with the transportation of automobiles by water on the Great Lakes?
A. Yes; I have.
Q. Now, Mr. Rivett, you have heard the former witnesses, Mr. Hern and Mr. Brennan, testify that the production and
237 shipment of automobiles was highly seasonal. Is that true also with the Hudson Motor Car Company?
A. That is right.
Q. That is true throughout the industry?
A. Yes.
Q. The entire industry changes models at about the same time now?
A. That is right.
Q. Which involves usually shut downs of the factories from four to six weeks right in the middle of the summer?
A. That is right.
Q. Now, are you familiar with the facilities for the transportation of automobiles by water on the Great Lakes and particularly Lake Erie, as it has existed for the past several years?
A. Yes.
Q. Have you examined applicants' exhibit 25?
A. Yes, I have.
Q. Now, I will ask you, Mr. Rivett, from your knowledge of the automobile movement by water on the Great Lakes and your knowledge of the facilities available, if in your judgment it would have been possible for the regular water carriers without the use of the vessels of the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company——
A. No; it would not have been possible.
Q. To have handled those 85,000 automobiles?
238 A. No it would not have been possible.
Q. Now, did the Hudson Motor Car Company experience any difficulties in the transportation of their automobiles during 1941?
A. Yes, we did. We had our cars delayed on the docks of all companies in 1941 because space was not available to get them away.

Q. That is, with all of the companies that were transporting automobiles during 1941, during the peak periods there were delays in the transportation of your automobiles?

A. That is right.

Q. And when did those delays occur primarily, Mr. Rivett?

A. Well, along in November, October, and November 1941, I believe, and the first part of December also.

Q. Do you know whether or not any of the carriers discontinued any services during the season of 1941 between the Great Lakes ports?

A. Well, I understand that there was some discontinuance.

Q. And to what ports?

A. I believe Milwaukee and Duluth.

Mr. EISEN. Didn't you rule on that before?

Mr. ELDRED. I object to that and move it be stricken from the record.

Exam. MCGRATH. Objection sustained.

Mr. FOSTER. I believe that is all.

Exam. MCGRATH. Cross-examine.

239 Cross-examination by Mr. EISEN:

Q. In connection with exhibit No. 25, Mr. Rivett, can you tell us how many of those automobiles were Hudson Motor Car automobiles transported in 1941?

A. The total for the entire season?

Q. Yes; transported by water via the D. & C. facilities on Lake Erie?

A. Why, approximately 10,000.

Q. 10,000?

A. Yes.

Q. Can you tell us how many cars moved on Lake Erie, your cars, via the Nicholson Universal Steamship Company.

A. No, I haven't got that figure.

Q. Can you give us any idea?

A. Well, I would say approximately 5,000.

Q. You would say 5,000?

A. Approximately; yes.

Exam. MCGRATH. From what port on Lake Erie, or from what port are the Hudson cars shipped via Nicholson?

The WITNESS. From Detroit. I am not sure about that figure. That is just a guess.

By Mr. EISEN:

Q. Don't you think 5,000 is inflated quite a bit?

A. It may be; I am not sure.

Q. You have no figures with you?

240 A. No.

Q. Well, isn't it a fact that the preponderance of your tonnage moved via D. & C. in 1941?

A. That is possible; yes.

Q. Isn't it a fact that during 1941 you had requests from your dealers to route traffic via Nicholson Universal Steamship Company and you disregarded those requests and moved them D. & C.?

A. I don't know.

Q. Is your company manufacturing automobiles at the present time?

A. No.

Q. Do you have need for any automobile transportation services at the present time?

A. At the present time? You are talking about water transportation?

Q. Water transportation.

A. No.

Exam. McGRATH. Will you during the coming season of navigation?

By Mr. EISEN:

Q. During the coming season of navigation?

A. I don't know.

Q. Do you know when you will need water transportation service?

A. No; I do not.

Mr. EISEN. That is all.

241 Exam. McGRATH. Any further questions on cross examination?

Mr. LEWIS. Just one or two.

Q. Mr. Rivett, do you divide your total production of cars for shipment between the various carriers, that is, between the rails, the motors and the water carriers, during a season of navigation?

A. You mean do we ship by all methods of transportation?

Q. Yes.

A. Yes, sir; we do.

Q. And what percentage do you ship by means of each type of transportation facilities?

A. Well, roughly, during the season of navigation about 80 per cent of our cars go by water, truck or drive, and the balance by rail.

Q. Now, is that true of the other automobile producers?

A. I don't know.

Q. Well, can you give us the total number of automobiles offered for water transportation at the peak of the season of 1941?

A. Of the Hudson Motor Car Company?

Q. Yes, by the Hudson Motor Car Company.

A. At the peak of the season?

Q. At the peak of the season.

A. No; I can't answer that question.

242 Q. And can you answer that question as to any other automobile manufacturer?

A. No; I cannot.

Q. Then you are not in position to give us the daily capacity, vessel capacity required to handle the shipment of automobiles by water at the peak season of 1941, are you?

A. I am not prepared right now; no.

Q. No.

A. We could develop that information.

Q. Do you have here available, or have you informed yourself as to the available capacity of water transportation facilities during 1941 at any time?

A. No; I don't know.

Q. Well, then you did not base your opinion that you gave that there were not sufficient available facilities, you did not base that upon any statistics or information that you had in that respect; is that correct?

A. Well, on the figures only of the cars left on hand on the docks, not moved off the docks.

Q. You just arrived at that conclusion from the fact that there were some cars left on the dock?

A. Cars left on the docks. We were told that there was not sufficient cargo space to handle the cars off the docks.

Mr. LEWIS. That is all.

EXAM. MCGRATH. And the docks that you have reference
243 to are the docks in Detroit here?

The WITNESS. Detroit; that is right.

By Mr. ELDRED:

Q. Who told you, Mr. Rivett, that there was not enough facilities of boats for handling the movements off the dock here in Detroit?

A. Who told us?

Q. Yes.

A. You mean the names of the persons that told us?

Q. No; the companies. Which company was it?

A. Both D. & C. and Nicholson told us that the cars were left on the docks—that they did not have the service to take the cars off the docks.

Q. Would you state who it was at Nicholson Universal that said there was not sufficient service to points on Lake Erie?

A. I don't know who it was that said that; no.

Q. Well, does that statement refer particularly to ports on Lake Erie or to other ports on the other lakes?

A. I would say it referred to all ports generally.
Q. Was this statement made directly to you, sir?
A. Directly to me?
Q. Yes.
A. When I am talking about all ports generally?
Q. Yes.
A. Yes; it was.

Q. Now, what is the purpose of your testimony here
244 today, Mr. Rivett?

A. To protect the Hudson Motor Car Company. To provide the Hudson Motor Car Company with what we think is a proper transportation facility for handling automobiles.

Q. In what way? How is the Commission to do that?

A. Why, I don't know how the Commission is to do that. Probably by granting this request here of the applicant.

Q. If the Commission granted this request would that in any way increase the available facilities for the Hudson Motor Car Company?

A. It would probably maintain the facilities at least that were available during the season, when there were the most facilities available.

Q. Now, your assumption is that if the D. & C. did not charter the boats of the McCarthy and the Automotive Steamship Company that they would not use any other boats, is that it?

A. I don't know. I can't answer that question.

Q. So that when you made the statement that it was necessary now—that the existing carriers could not transport the traffic, you were assuming that if they did not use McCarthy they would not use any other steamships?

A. You mean if we did not use McCarthy?

Q. No. If the other carriers, if the D. & C. did not charter the boats from McCarthy and the Automotives that they would not have chartered any boats from any other person?

245 A. I don't know. I can't assume that.

Q. Well, then, what was the basis of your statement, then, that they could not have handled the traffic?

A. That who could not have handled the traffic?

Q. That the existing carriers could not have handled it in 1941 without these boats of McCarthy and the Automotive?

A. Well, as I said before, the fact that there were cars laying on the docks.

Q. You mean they could not even handle it with the existing boats?

A. Apparently not.

Q. Were you here this morning?

A. No—I was here part of the morning.

Q. You have not seen applicants' exhibit No. 20?

A. No. 20? No.

Q. Does it make any difference to the Hudson Motor Car Company who operates the boats so long as you have sufficient for the needs of the company?

A. Yes; it does.

Q. Who must operate them?

A. We don't say who must operate them. We would like to see McCarthy operate the boats.

Q. Has McCarthy operated them in the past?

A. Well, he is the only one we have ever dealt with.

Q. Your bills of lading and your payments were all made
246 to the D. & C., were they not?

A. That is right.

Q. Is your testimony here only insofar as there is a shortage of transportation by water? How about transportation by rail and by motor carrier?

Mr. FOSTER. Mr. Examiner, I object to that.

By Mr. ELDRED:

Q. Is that sufficient to meet your needs?

Mr. FOSTER. Just a moment, Mr. Examiner. I don't think that that is pertinent in this hearing.

Exam. MCGRATH. He may answer.

The WITNESS. Well, as far as we are concerned, as far as rail is concerned I believe at least during the season of navigation there has always been a sufficient quantity of freight cars available and as far as transportation by highway, I don't know of any delay, any serious delay.

By Mr. ELDRED:

Q. So that as I gather the testimony, it is to the effect that as far as your company is concerned, you have done business with Mr. McCarthy and you would like to see him be able to continue?

A. That is right.

Mr. ELDRED. That is all.

Mr. EISEN. I have one question that I overlooked. May I ask it at this time?

Exam. MCGRATH. Yes.

By Mr. EISEN:

247 Q. Mr. Rivett, at the last hearing Mr. McCarthy stated that if he did not have the rights to operate the boats himself the boats would be operated by one of the other lines. It might even be the Nicholson Universal Steamship Company, he stated. Now, if those McCarthy boats were chartered to one of

the existing lines and operated in that fashion would that satisfy your company?

Mr. Foster. Just a moment, Mr. Examiner, I am going to object to that. That is highly speculative. One of these operating lines had these charters and it asked to get out of them. Now, as to what somebody else will do in the future and if that will satisfy somebody is highly speculative.

Mr. Eisen. Mr. McCarthy stated that right in the record at page 41 of the record, Mr. Examiner.

Mr. Foster. I am not saying that Mr. McCarthy did not testify to that but I say it is wholly immaterial to ask this witness that.

Exam. McGrath. What testimony on direct is this cross-examination of?

Mr. Eisen. That he needs these boats and that if McCarthy does not get the rights to operate them he is going to be disabled to some extent.

Exam. McGrath. Answer the question. Objection overruled.

The Witness. What is the question again, now?

Mr. Eisen. Will you read it, Mr. Reporter, please?

(Question read.)

248 Mr. Foster. Just a second, Mr. Examiner. I want to read this question and answer.

Exam. McGrath. Well, off the record just a minute.

(Discussion outside the record.)

Exam. McGrath. Back on the record.

Mr. Foster. I submit, Mr. Examiner, if he is going to read the question he should read the question and the answer, not just an excerpt from the answer.

Exam. McGrath. It seems to me you are going pretty far afield in examining this witness on testimony by witness McCarthy at a prior hearing.

Mr. Foster. That is right. I think it is wholly immaterial.

Exam. McGrath. I will change my ruling and sustain the objection to the question.

Mr. Eisen. Exception.

Exam. McGrath. Any further questions now?

Mr. Eisen. No.

Exam. McGrath. Any further questons on redirect?

Redirect examination by Mr. Foster:

Q. Mr. Rivett, did you have any complaints from dealers about the service that was given by these carriers last year?

Mr. Eisen. Which carriers?

Mr. Foster. By the Detroit & Cleveland Navigation Com-

249 pany or the Nicholson Universal, as to the promptness and despatch?

A. Yes; we had telegrams——

Mr. LEWIS. I object to that, Mr. Examiner.

Mr. FOSTER. He has gone into that.

Mr. LEWIS. That is purely hearsay. I don't think that that is proper proof of any failure of service.

Mr. FOSTER. They have gone into great length in that in cross-examination and he stated that they did not give service.

Exam. MCGRATH. Can he go any further than that? Can you make your case any more secure by having the witness give us hearsay testimony as to what somebody else told him?

Mr. FOSTER. Well, of course, he is in charge of the traffic and he is the one that would know this.

Mr. LEWIS. Yes; but you are asking the witness to testify now what somebody else complained about.

Exam. MCGRATH. You can ask whether he received complaints, I think.

Mr. FOSTER. Yes.

Q. Did you have complaints?

A. Yes; we had complaints.

Mr. FOSTER. That is all.

By Exam. MCGRATH:

Q. From what sources?

A. From our dealers and distributors.

Q. At what points?

250 A. Well, I don't know offhand what the points were but I know we had numerous letters and telegrams asking us to do everything possible to get their cars moved out of Detroit and all the way to destination.

Q. Well, from which of the destinations—the destination served through the ports on Lake Erie?

A. No; mostly points beyond the ports of Lake Erie.

Q. In what States?

A. New York; Pennsylvania.

Mr. FOSTER. I don't think you understood the Examiner's question. He said points served through ports on Lake Erie.

The WITNESS. Yes; points in Pennsylvania and New York are served through the Lake Erie ports.

Exam. MCGRATH. Any further questions of this witness?

Mr. FOSTER. That is all.

Exam. MCGRATH. That appears to be all. We will take a brief recess at this point.

(Whereupon a short recess was had.)

Exam. MCGRATH. You may proceed.

H. L. ZENZIUS was sworn and testified as follows:

Direct examination by Mr. FOSTER:

Q. Will you state your full name?

A. H. L. Zenzius.

Q. Where do you reside, Mr. Zenzius?

251 A. 8100 East Jefferson, Detroit, Michigan.

Q. With whom are you connected?

A. Baker Driveaway Company.

Q. And in what cities do they operate?

A. Detroit, Buffalo, Roanoke, Cleveland.

Q. Do you handle cars from Buffalo that have been handled to that port by water?

A. We do.

Q. How long have you been connected with the Baker Driveaway Company?

A. Approximately two years.

Q. And what is your position with them?

A. Vice president and general manager.

Q. Mr. Zenzius, what was your connection prior to becoming affiliated with the Baker Driveaway Company?

A. General manager of the National Automobile Transport Association.

Q. And what was the nature of that Association?

A. It was an association composed of automobile carriers over the United States.

Q. And did many of its members operate in the Great Lakes area?

A. They did.

Q. And in your position with the Baker Driveaway Company and the National Transport Association did you become familiar with the general situation on the Great Lakes as to the

252 transportation of automobiles by water?

A. Yes, sir.

Q. And have had dealings with the various carriers?

A. Yes, sir.

Q. Do you know generally all the facilities of those carriers?

A. Yes, I do.

Q. On Lake Erie?

Mr. ELDRED. You are referring to water carriers?

Mr. FOSTER. The water carriers.

A. On Lake Erie.

Q. And who are the principal water carriers on Lake Erie?

A. Nicholson and D. & C.

Q. And Mr. Sullivan's client also, the Great Lakes Transit?

A. Yes.

Mr. Lewis. Pardon me, Mr. Foster, are you referring now to automobile carrying facilities only?

Mr. Foster. That is right.

Q. And during the season of 1940 and 1941 did the Baker Driveaway Company transport out of Buffalo automobiles that had been transported to that port by vessel?

A. We purchased rights in 1940 out of Buffalo.

Q. In 1940?

A. That is right.

Q. And did you say that you did operate out of Cleveland?

A. Yes, sir.

253 Q. And you also transported automobiles out of Cleveland that had been transported to that port by water?

A. Yes, sir.

Q. Have you known generally of the Automotive Trades Steamship Company and the T. J. McCarthy Steamship Company?

A. Yes, sir.

Q. Have you examined applicants' exhibit 25?

A. No, I haven't.

Q. From your knowledge of the available transportation facilities on Lake Erie during the seasons of 1940 and 1941 I will ask you whether or not in your opinion the 77,741 cars in 1940 and the 85,493 cars in 1941 which were transported on the vessels of the Automotive Trades Steamship Company and the T. J. McCarthy Steamship Company could have been transported by vessels of the other water carriers?

Mr. Eisen. I object. The man has not been qualified to talk about water transportation.

Exam. McGrath. Isn't that so? Have you qualified him?

Mr. Foster. I think he said that he was with these lines transporting automobiles from the——

Exam. McGrath. He may answer and give the basis of his answer.

The Witness. Let me have the question, please.

(Question read.)

The Witness. No, and give satisfactory service.

254 By Mr. Foster:

Q. And what do you base that on? What do you deem satisfactory service?

A. Leaving the docks in reasonable time after deliveries are made to satisfy our customers at the other end. To my knowledge and information the service was not up to standard during these two years with the equipment that was available for Lake Erie. In other words, there was a delay in effecting delivery.

Q. Even with these vessels moving the amount of cars as shown on this exhibit?

A. Yes, sir.

Mr. EISEN. The same objection. The witness has not qualified himself. He has not indicated that he knew how many of these cars could have moved, if any. This is just his own opinion predicated on a motor truck operation.

Exam. MCGRATH. Have you stated fully the basis for your answer?

The WITNESS. I am answering on the basis that we are connecting with the boat companies at Buffalo and Cleveland and we know from information received and complaints received from our dealers and distributors that the deliveries were not effected as rapidly as they wanted them.

Mr. LEWIS. I object to that, Mr. Examiner, and move that it be stricken as hearsay testimony.

255 Mr. FOSTER. I don't think it is hearsay testimony at all. He is a connecting carrier with these people and the complaints came to him as the carrier at the delivering end.

Mr. EISEN. He has now indicated in connection with which lines he got the complaints. These cars could have all moved D. & C. and he got the complaints that way.

Exam. MCGRATH. Can you state that for us? Can you satisfy that objection?

The WITNESS. I would say from both lines. Our traffic moves principally over the Nicholson and D. & C. and there have been many times we have been sitting over there in Buffalo with rigs and the cars have been at this end and we have had to check to see why we were not getting the cars and the docks here have been blocked.

By Mr. FOSTER:

Q. In other words, you have had your motor transports at Buffalo waiting for these automobiles that you knew were on the docks here at Detroit?

A. In many instances.

Q. That applied to both the Detroit & Cleveland Navigation Company and the Nicholson Universal Steamship Company?

A. Yes, sir.

Mr. EISEN. The same objection, Mr. Examiner. He has not indicated that he knows whether those boats could have been—whether those automobiles could have been carried by other carriers.

256 Exam. MCGRATH. You can develop that on cross examination.

By Mr. FOSTER:

Q. You know, as a matter of fact, that—

Mr. ELDRED. Well now, can't you ask the witness a question instead of starting right in and testifying for him, Mr. Foster?

Mr. FOSTER. I am not testifying.

Mr. ELDRED. Yes, you are. It has been leading all day long. I have let it go ahead and proceeded but when you have a public convenience and necessity witness I think you ought to let him state the facts. I am going to have to object to that question.

Exam. MCGRATH. Will you reframe your question to avoid that criticism?

Mr. FOSTER. Strike out that question.

Q. Was it a fact that with all the facilities that were available, including the three so-called McCarthy boats, that this situation which you have just described did exist?

A. Yes, sir.

Q. And was that so at both Buffalo and Cleveland?

A. I would say principally Buffalo.

Q. Principally Buffalo?

A. Yes.

Q. Do you have joint proportional rates—joint or proportional rates with the Detroit & Cleveland Navigation Company and the Nicholson Universal Steamship Company?

257 A. Yes, sir.

Exam. MCGRATH. What is the status of the Baker Driveaway Company? Has it been granted a certificate as a common carrier?

The WITNESS: Yes, sir.

By Mr. FOSTER:

Q. It is a common carrier between Cleveland and other points and between Buffalo and other points, is that right?

A. Yes, sir.

Mr. FOSTER. I think that is all.

Exam. MCGRATH. Cross-examine.

Cross-examination by Mr. ELDRED:

Q. How would this situation be bettered or improved if the Commission granted these applications?

A. Well, my understanding of this application, or this applicant, I will say first, is that they are no longer connected with any other company, such as the D. & C., whom they were formerly with. In other words, as conditions are today the boats are today without rights to operate and I am of the opinion that it is necessary that they be kept in service, be kept in operation to give continued service.

Q. Now, how would it improve the condition if they were kept in service, that you complained about?

A. Well, I don't know as it would improve the service any but it certainly would not help to take them out

258 Q. Is there any need for the service today?

A. I wouldn't say today.

Exam. McGRATH. Will there be during the coming season of open navigation?

The WITNESS. I can't answer that.

By Mr. ELDRED:

Q. What is your opinion?

A. Well, I am of the opinion that there is going to be a lot of shipping by water by the government to Buffalo.

Q. Of what?

A. Motor vehicles for the Army and Navy.

Q. What do you base that opinion on?

A. I base it because there is going to be a lot of traffic and the government is looking for the cheapest traffic, the cheapest way of shipping it. I am also under the impression that the government will use all forms of transportation.

Q. So your belief is that the government will transport 85,000 trucks by water?

A. I wouldn't attempt to estimate what the traffic will be I am convinced that the government will use water traffic.

Q. You heard the testimony here that the government intended to—was negotiating or, at least, it made a survey to use these boats for other facilities, did you not, or did you know that?

A. Yes, I heard that testimony.

Q. Yes. So if they use them for these other facilities they

259 would not be available, would they?

A. Well, from my knowledge they are making a survey of all forms of transportation, in fact they are at our industry every day taking measurements of all to see what everything can be used for. There is no indication that they are going to do so.

Q. Now, when is it you first knew that there was a T. J. McCarthy Steamship Company?

A. Well, I don't know the exact length of time. I have known of McCarthy ever since they have been in business. I don't know the exact time.

Q. Well, you knew McCarthy but did you know that there was a steamship company by his name?

A. Yes, I heard of the steamship company.

Q. You never did any business with him, though?

A. All our business in connection with the D. & C. has been with Mr. McCarthy or Mr. Hoffman or Mr. Ranahan.

Q. Did you know that Mr. McCarthy had a contract with the D. & C., an exclusive contract?

A. I didn't know what his connections were with the D. & C. I knew he was representing himself and the D. & C. whenever he could call or we would communicate with him on any business.

Q. Does it make any difference to you who operates these boats?

A. No, I wouldn't say so, only, as I stated before, it is my
260 understanding that the boats are out on a limb, so-called, right now and I am interested in seeing them stay in service and I also would like to continue doing business with the people we have been doing business with for several years for the reason that we know no one else.

Q. Now, you say they are out on a limb and you want to see them stay in service?

A. I mean the ships themselves, not McCarthy or the individuals.

Q. How would the granting of this application keep these boats in service?

A. Well, it is my understanding that they are so-called divorced right now from their past connections and there is no telling or no information that they are going to be hooked up with anybody else or anybody is going to requisition the boats.

Q. Still you don't know whether there is going to be any need for them this summer either?

A. No, only I certainly am interested in keeping all the transportation we have got today.

Q. Well, do I gather, then, that you want these boats kept available for this service in spite of the fact that you don't know whether there is any need for it?

A. Well, I would like to see them have rights so the boats can operate. If the time comes that the government is going to requisition them or lease them or anything else, to use them
261 for other commodities, I certainly think they should have rights to move automobiles when the time comes for them to be moved.

Mr. ELDRED. That is all.

Exam. MCGRATH. Any further questions on cross-examination?

By Mr. EISEN:

Q. Did you have any dealings at any time with the Automotive Trades Steamship Company?

A. No.

Q. What were your dealings, if any, with the T. J. McCarthy Steamship Company?

A. Well, our dealings I wouldn't say was direct with the McCarthy Steamship Company. As I say, all our dealings have been through the D. & C. or the other companies and it happens that in our dealings with the D. & C. the dealings have been with the three individuals I have named, namely, McCarthy or Mr. Hoffman or Ranahan of Buffalo and a man who is no longer here, Mr. Patterson, the only men that we knew in the D. & C.

Q. Was not Mr. Patterson the general freight agent of the D. & C.?

A. That is right.

Q. And was not Mr. McCarthy at all times that you referred to the manager of the automobile division of the D. & C.?

A. I don't know what his title was with the D. & C.

Q. Do you know whether he was connected with the D. & C.?

262 A. That is right, some connection. I don't know just what connection it was.

Q. When you treated with him you treated with him as part of the D. & C., didn't you?

A. I would say so.

Q. And so also with the other men that you mentioned?

A. That is right.

Mr. EISEN. That is all.

By Mr. LEWIS:

Q. The delays that you speak of occurred only at Buffalo, only in connection with automobiles consigned to Buffalo?

A. Our operation out of Cleveland was very small and our only other operation off the boats was at Buffalo, so that is why——

Q. Am I correct that the delays that you referred to during the seasons of 1940 and 1941 occurred in connection with automobiles consigned from Detroit to Buffalo?

A. That is right, as far as our company is concerned.

Q. And that is all that you personally would have any knowledge of?

A. That is right.

Q. Now, can you give us the number of automobiles delivered at Detroit or placed in the hands of these two water carriers at Detroit for transportation to Buffalo during these two seasons of 1940 and 1941?

A. No; I haven't those figures.

263 Q. And can you give us the automobile carrying capacity of the vessels in use by Nicholson Universal and the D. & C. between Detroit and Buffalo during 1940 and 1941?

A. I would say it would run from 250 to 400 cars apiece. The smaller boats 250. This is a guess.

Q. You say they would average how much?

A. From 250 to 260 cars.

Q. Automobiles per boat?

A. That is right.

Q. And how many boats did each of these carriers have available for that traffic?

A. I don't know how many Nicholson had. I believe D. & C. had something like four boats.

Q. Each of which had the capacity that you referred to?

A. I thing a smaller boat would handle around 250 or 60 or 40 cars, somewhere in there, and the others would handle maybe 400, 450 cars.

Q. Now, the four boats that you are referring to operated by the D. & C., do you know the name of them?

A. No; not offhand. I have seen them around here.

Q. Well, is it the "Tremaine," "Mead," "Ingalls," and "Fitch"?

A. I have seen them on the exhibits here today. That is the only thing I know on them.

Q. Well, they are freighters of the general type, aren't they?

A. Yes; automobile carrying boats.

261 Q. Didn't D. & C. also have combination passenger and freight boats which were used to carry automobiles?

A. Yes; they did but I don't think the volume carried in those boats were very large and I don't think it would cut a very big hole in the number that was on the docks if they had to rely on the passenger boats to handle them.

Q. You don't include the capacity of those boats?

A. No; I don't. I don't know the capacity. That all depends, I understand, on the tourist accommodations and so on.

Q. And were those the only two water carriers engaged in carrying automobiles between Detroit and Buffalo?

A. No. The Great Lakes.

Q. And what was the capacity of the "Great Lakes"?

A. I don't know that.

Mr. Lewis. That is all.

The Witness. The reason for that, as I say, my dealings have been practically with those companies.

Exam. McGrath. Any further questions on cross-examination? Any questions on redirect?

Mr. Foster. Yes.

Redirect examination by Mr. Foster:

Q. This question was gone into on cross-examination. Why are there not automobiles available for transportation during the season of 1942?

A. What was the question?

(Question read.)

Mr. EISEN. I object to the question going to this witness. The man to ask it of is the manufacturing man.

Mr. FOSTER. They went into it on cross-examination, so I think that this man can answer if he knows. He has been in the transportation. It is perfectly obvious to all of us but I do want the record to show why the automobiles will not be available for transportation during 1942.

Exam. McGRATH. Do you know, Mr. Zenzius?

A. I don't think anybody here knows that they are not going to be available. They might be available next month; we don't know. It has not been proven that they are not going to operate in 1942.

Mr. ELDRED. I don't think this is the witness to testify as to the reason, with all due respect to his abilities.

Exam. McGRATH. Have you any further questions?

Mr. FOSTER. I have no further questions.

Exam. McGRATH. That appears to be all, sir. You are excused. Next witness.

Mr. FOSTER. Mr. Davis.

P. W. Davis was sworn and testified as follows:

Direct examination by Mr. FOSTER:

Q. State your name.

266 A. P. W. Davis.

Q. Your residence?

A. Buffalo, New York.

Q. And with whom are you connected?

A. I am president of the Hulbert Forwarding Company.

Q. What type of business is that company engaged in, Mr. Davis?

A. In automobile forwarding.

Q. Principally from Buffalo east?

A. Yes, sir.

Q. Does this company have joint or proportional rates with the water lines running into Buffalo?

A. Yes, sir.

Q. And your company operates as a common carrier?

A. Yes, sir.

Q. To what territory principally from Buffalo?

A. From Buffalo to points and places in the State of Massachusetts, Rhode Island, New Hampshire, and parts of New York and Connecticut.

Q. And are most of the automobiles which you transport eastbound from Buffalo brought to Buffalo by water?

A. Yes; during the period of navigation they are all brought to Buffalo for my account by water.

Q. And what companies during 1940 and 1941 transported these automobiles to Buffalo?

A. Nicholson Universal and D. & C. and a few from
267 Great Lakes Transit.

Q. Now, is the peak period of the transportation of automobiles by your company tied in with the peak period of the water carriers or by water carriers?

A. Well, I would like to testify, as far as my business is concerned, that our peak season is during the spring and the fall.

Q. During the spring and the fall?

A. Yes; with practically nothing during August and September, parts of August and September.

Q. Now, during the season of navigation of 1940 and 1941 what was the situation in relation to the service between Detroit and Buffalo?

A. Well, there was a large movement of automobiles during both of those years and in my opinion there was just not enough boats available or at least they did not make them available to give us the service that our accounts expected.

Q. Now, when you speak of your accounts, Mr. Davis, explain for us just what you mean by that.

A. Well, in our business we solicit dealers and distributors in points and places in our territory and some of them are routed by the dealers and sometimes they ask us to ship them the quickest way possible, using our judgment, but in most cases they are routed by the dealer over the boat line boats to Buffalo, to forward on.

Q. And these dealers and distributors whom you solicit,
268 they will sometimes say Universal, Nicholson Universal, or D. & C. and the Hulbert Forwarding Company as the connecting carrier at Buffalo?

A. That is right.

Q. Now, do you know from your actual experience just what service the water carriers did give during the season of 1940 and 1941?

A. They gave the best service that they could with the equipment that they had but still there were several hundreds of cars laying on the dock and there were from two or three or four days late in getting the cars off from the dock here at Detroit.

Q. And getting them down to Buffalo?

A. That is right.

Q. And you know that of your own knowledge?

A. That is right.

Q. Now, do you have any way of knowing when the cars reach the dock here at Detroit from the factory?

A. Only from the date on the bill of lading.

Q. Only from the date on the bill of lading?

A. Yes, sir; they had on the date that the cars came into Buffalo and I knew then how many days expired.

Q. And did you have occasions where the dealers or distributors notified you that they knew the cars had been shipped on a certain date?

A. Yes; I have had that.

269 Q. And what would you do on an occasion like that? Would you check with the automobile boats here to find out why they ——.

A. I usually check with the boat companies here in Detroit to see if they had that particular shipment on hand here in Detroit or if it was on its way over.

Q. And in checking on the Detroit & Cleveland shipments, Detroit & Cleveland Navigation Company shipments, with whom did you check?

A. With Mr. Hoffman.

Q. You checked with Mr. Hoffman?

A. Yes.

Q. Did you have any dealings directly with the Detroit & Cleveland Navigation Company in your relations with them or were your dealings with Mr. Hoffman or Mr. McCarthy?

A. Yes; I paid my freight money to the D. & C. Navigation Company but any conversations that we might have or any dealings was either with Mr. McCarthy or Hoffman or Mr. Ranahan of Buffalo.

Q. Mr. Ranahan was the representative of the T. J. McCarthy Steamship Company at Buffalo?

Mr. EISEN. I object.

Mr. ELDRED. I object.

Mr. EISEN. The record has not shown so. Mr. Foster is testifying.

Exam. MCGRATH. Ask him what position Mr. Ranahan
270 had. What is your answer to that question?

The WITNESS. I didn't hear it.

Exam. MCGRATH. What was his position?

By Mr. FOSTER:

Q. What was Mr. Ranahan's position with the T. J. McCarthy Steamship Company at Buffalo?

A. Well, on his office door it says, "T. J. McCarthy Steamship Company," on his office door, but it also says, "D. & C."

Q. It also said "D. & C."?

A. Yes.

Q. But your dealings were with Mr. Ranahan?

A. That is right.

Q. Now, do you recall having occasions where distributors or dealers did make complaints to you about the cars not coming forward?

A. Well, I couldn't give any specific dates but I do know that we had several of them during the—during the spring months and the fall months we have several calls from the dealers to look up their shipments for them.

Q. And were those on shipments which were on D. & C. or Nicholson Universal?

A. Both companies.

Q. And did you have a situation where your units got back to Buffalo and the cars were not there for them?

A. At some days in the week; yes. For instance, what I mean by that is, sometimes the boats would come in four
271 or five boats in a day and that would fill the Buffalo docks up and then we might be two or three days relieving them and then maybe when we got back the boats would not be back again with some more cars and we might have to wait a bit.

Q. Well, from your working arrangements with the Nicholson Universal and the Detroit & Cleveland Navigation Company and the Great Lakes Transit and your general knowledge of the manner in which the Buffalo business was handled during 1940 and 1941, I will ask you whether or not, in your judgment, if you eliminated three vessels on which there were transported in 1940, 77,741 cars and in 1941, 85,493 cars, if the other lines could have with their remaining facilities given any kind of a service at all into Buffalo?

Mr. Eisen. I object. This witness has not been qualified. The last witness developed in cross examination that he did not know anything about the other boat lines.

Mr. Lewis. I would like to add this objection: The question asks for too great an answer. He says, "Any kind of service at all." I don't think that that is sufficiently definite.

Exam. McGrath. Further, were all those automobiles transported to Buffalo?

Mr. Foster. No. That includes Buffalo and Cleveland.

Exam. McGrath. Well, is the witness qualified to answer as to Cleveland?

272 Mr. Foster. Just a moment. We have another employe on the Buffalo movement. I will strike that question.

Q. Well, from your knowledge of the manner in which the automobiles were transported between Detroit and Buffalo, I will ask

you whether or not the other carriers without the service of the steamer "Mead," the steamer "McCarthy" and the steamer "Ingalls," in your judgment could have transported the cars between Detroit and Buffalo which were transported by those three vessels?

Mr. Eldred. I object.

Mr. Eisen. I object.

Mr. Foster. For the purposes of that question I will say that applicants' exhibit 24 shows there were transported from Detroit to Buffalo on the steamer "Mead" during 1941, 15,551 cars and on the steamer "T. J. McCarthy," Ex "Morris S. Tremaine," 27,717 cars and on the steamer "George H. Ingalls," 27,723 cars.

Mr. Eisen. I object.

Exam. McGrath. Are you personally familiar with the vessels on which these automobiles were transported during that year, the capacity?

The Witness. I know approximately; yes. I know that those boats existed. I know that they carried automobiles. How many I would not know, but every trip I could tell approximately how many they carried but for a total year I couldn't tell. I know how many we shipped, and so forth.

Mr. Eldred. You don't know whether they operated to
273 capacity there.

Mr. Eisen. If he is going to be permitted to answer, may I just test his qualifications first?

Exam. McGrath. Yes.

By Mr. Eisen:

Q. Mr. Witness, will you tell us how many boats the Great Lakes Transit operated from Detroit to Buffalo in 1941?

A. They had one for the transportation of automobiles and then they had their package freighters and loaded some cars on deck.

Q. Can you tell us how many there were of each?

A. No; I couldn't tell you how many package freighters there was.

Q. Do you know how much unused capacity there was on each boat?

A. Well, I could tell you that they came in lots of times leaving their cars on the Detroit docks and it doesn't seem to me that they would come in if they had the capacity and leave our cars sit there.

Q. Did you see every one of their boats that came in?

A. No; I didn't see every one.

Q. Do you know whether any boats came in without full loads?

A. If I thought they did and my cars were up there I would like to talk to them about it.

Q. But you don't know?

A. No; I wouldn't know whether they came in empty or not.

Q. Would your answer be the same with respect to the
274 Nicholson Universal Steamship Company boats?

A. No; because I know Nicholson well enough to know that they would load all the cars they could.

Q. Will you tell me the names of the boats and the automobile capacities of each, please?

A. Of the Nicholson?

Q. Of Nicholson boats.

A. I will name the ones I remember. The Woodruff, which is now the Hewitt.

Q. Will you tell us what the automobile capacity is?

A. I think that boat carries close to 500, if not more.

Q. Will you tell us on how many trips she came in not loaded to capacity?

A. Very few times during those two years.

Q. But you know there were times?

A. Very rarely.

Q. But there were times?

A. Very rarely.

Q. You checked each one?

A. No; I don't go over checking the boat companies business at all.

Q. Well, then, you don't know anything about whether they were loaded to capacity or not?

A. No. I have been around there for some nine years and I have seen boats come in there with their capacity and I have seen
275 boats come in there rarely when they were not full.

Mr. EISEN. I think that proves that the witness has not the qualifications to answer, Mr. Examiner.

Mr. FOSTER. Mr. Examiner, he has testified that they left the cars here on the dock. Now, if they ran down there with empty boats I think it is up to them to develop that, not us.

Exam. MCGRATH. Isn't that as far as you can go with this witness, then?

Mr. FOSTER. No; I don't think it is, Mr. Examiner.

Exam. MCGRATH. Has he indicated in answering those questions that he knows the capacity of all the boats?

Mr. FOSTER. No; he does not know whether they were running on that particular lake or not. He doesn't know whether the Hewitt was running during the lull season with a part load or what.

Exam. McGRATH. What question did you want him to answer?

Mr. FOSTER. I wanted him to answer the question originally which I propounded to him. I think he is perfectly qualified to give his opinion on it. He had dealings with both of these people and he said they left the automobiles on the dock here for four or five days, he knew that from the bills of lading and he had to trace them to find out why they did not ship them. Now, if he is not qualified to testify during the peak period, with that con-

276 dition existing with all of the carriers——

Mr. LEWIS. It seems to me, Mr. Examiner, that Mr. Foster is asking the witness to give a guess, not an opinion based on any facts. There is no qualification.

Mr. EISEN. We will have an exhibit that shows that the witness knows nothing at all as to what Nicholson did about unused capacity.

Mr. FOSTER. He is testifying as a carrier, as to his actual knowledge in relation to these people who were connecting carriers with him.

Exam. McGRATH. He has already given the benefit of his views and information on that, as I understand it.

Mr. FOSTER. And I simply want to ask him this in view of his knowledge of the actual conditions as they existed, if in his judgment those carriers could have moved the additional automobiles that were moved on the applicants' vessels during those seasons? Now, he said he can give us an opinion on that.

Mr. EISEN. And I object because he admitted he had no knowledge.

Exam. McGRATH. Answer and give the basis of your answer.

The WITNESS. I would say that it would be impossible for the existing carriers to move that many automobiles without the use of those boats and I will base my——

Exam. McGRATH. What do you mean by "those boats"?

The WITNESS. I mean the "Ingalls" and the "Morris S.

277 Tremaine" and the "Mead." And I base my testimony on the fact that I have been out in Detroit several times and saw both of these companies' boat docks loaded to full capacity with automobiles and I did that at several times during the course of a year, spring and fall.

Exam. McGRATH. What year or years?

The WITNESS. Especially in the last two years.

Mr. EISEN. And, I submit, Mr. Examiner, that a couple of incoming boats would not mean the answer to that question.

Exam. McGRATH. Well, he has answered and given the basis for his answer.

The WITNESS. Another reason why I base my opinion is because our office is very close to the yard and we can certainly tell whether a boat comes in full or not.

Exam. McGRATH. Any further questions?

Mr. FOSTER. No further questions.

Exam. McGRATH. Cross-examine.

Cross-examination by Mr. EISEN:

Q. Have you had any relationship with the T. J. McCarthy Steamship Company with respect to transportation?

A. No; sir.

Q. With the Automotive Trades?

A. No; sir.

Q. Now, when you checked with the D. & C. you say you always contacted Mr. Hoffman?

278 A. That is right.

Q. Wasn't he a representative of the D. & C.?

Mr. FOSTER. Now, just a moment. That calls for a legal conclusion, as to whether or not a person was a representative.

Mr. EISEN. I will withdraw it.

Q. When Mr. Hoffman called upon you did he furnish you with D. & C. blotters, advertising blotters showing his name thereon?

A. Well, the blotters that we had had "T. J. McCarthy Steamship Company" on.

Q. Is this the type of blotter you received; showing the witness applicants' exhibit No. 1?

A. Well, unfortunately I have never had that blotter or any one like it in my possession. This is the first time I ever saw a blotter like that. It must be I am not on their mailing list maybe.

Q. You say you received a blotter from the T. J. McCarthy Steamship Company?

A. Any blotter that I ever had was "T. J. McCarthy Steamship company."

Q. Well, I asked you, did you receive a T. J. McCarthy Steamship Company blotter?

A. Yes, sir.

Mr. FOSTER. Now, just a moment, Mr. Examiner. This has gone far beyond the direct and what difference it makes

279 whose blotter he received is wholly irrelevant, I think.

Mr. EISEN. I call the Commission's attention to the fact that Mr. McCarthy testified that the only type of blotting advertisement he puts out was the blotter that I just showed the witness.

Mr. FOSTER. You are talking now about what Mr. Hoffman puts out, if that is material at all. We object to it, Mr. Examiner.

Exam. McGRATH. Objection overruled. Any other questions?

By Mr. EISEN:

Q. Now, you say you received complaints from your consignees. Didn't you check those complaints and find in numerous instances that the fault lie with the Hulbert Forwarding Company and not with the steamship company?

A. The only time that I called on the boat company with any complaints was when they were at fault. I did not call on them when I was, but sometimes due to the heavy flow of automobiles by boats, when they came in there five or six a day, it put us in a position where we could not handle all the cars, but I also say that we did receive several calls and complaints from the dealers where the cars were held in Detroit.

Q. So some of the complaints were due to your operation and some were due to the steamship?

A. I would say yes.

Q. And would you say that the reason for that was that
280 the boat and truck operations were not synchronized?

A. No; I wouldn't say that. The reason why I think there were complaints on both sides is because there were never sufficient equipment.

Q. On both sides?

A. On the boats, to bring the cars in in such a way that we could handle them, because when we tied up several hundred trucks for a twenty-four hour period and the boats came down there with 1,500 cars, why, we are tied up for them four boats that we have lines that we can never get them away fast enough.

Q. Well, if the factory tenders to the steamship company 1,500 cars on one day and 4 boat loads of cars come in as a result of that, how would you expect that situation to be improved by more boats?

Mr. FOSTER. Just a moment. I object to that question, Mr. Examiner, because it goes way beyond the direct and there is no testimony in the record at all that any automobile company ever did that to any automobile carrier. There is nothing to base that question on and it is going way beyond the scope of the direct examination.

Mr. EISEN. I think reference to exhibit 26 of Mr. Hoffman will show that there was such a condition existing.

Mr. FOSTER. That is the on hand record.

Exam. MCGRATH. That is Mr. Hoffman's testimony.

Mr. EISEN. No; but he testified, Mr. Examiner, that it
281 was the condition of the boat companies that 1,500 automobiles were dumped and he said if there were more boats that situation would have been done away with. Now I asked the witness if those 1,500 cars came to the steamship company on one day and that precipitated——

Exam. McGRATH. Well, do you know whether 1,500 cars were offered to the steamship companies on one day?

The WITNESS. I couldn't say. No; I couldn't say.

Mr. EISEN. That is all.

Exam. McGRATH. Any further questions?

Mr. LEWIS. Just a question.

Q. Have you made a study, Mr. Davis, of on how many occasions weather conditions or strikes caused delays to the shipments of automobiles from Detroit to Buffalo during 1940 and 1941?

A. Well, if you put your question into about four of them I can try to answer it.

Q. Supposing you do that. Let us take weather conditions in 1941, that is question number one.

A. I don't make a study of the weather conditions; no.

Mr. FOSTER. Mr. Examiner, I am going to have to object to this line of questioning on exactly the same basis. It goes way beyond the direct examination of Mr. Davis and there is no showing anywhere in this record that any delay was ever caused by strike in there or by weather conditions. Now, until that is shown we contend it is wholly immaterial.

282 Mr. LEWIS. Well, the testimony shows—at least the witness has testified to delays. He has not qualified himself to the necessary capacity of vessels to handle the traffic, so on cross examination I think we are entitled to go into the cause of the delays to which he refers.

Exam. McGRATH. Can you answer that question, sir? That question seems to me to be pertinent.

Mr. FOSTER. That is, if he knows it.

Exam. McGRATH. Yes, if he knows it.

Mr. FOSTER. But he is relating it purely to strikes. He is asking him if he has made a study of strikes or weather conditions.

Mr. LEWIS. I am limiting it to weather conditions in 1940.

Q. Do you know on what occasions weather conditions during 1940 caused delays in transportation of automobiles between Detroit and Buffalo?

A. In the early spring of 1940 there was a delay for weather conditions.

Q. Yes. And was there in the fall, in November of 1940, do you remember that?

A. No; I don't remember but I remember distinctly in the spring.

Q. In the spring of 1940. Now, do you remember of any similar delays in the spring of 1941?

283 A. Not for weather conditions but there was a short delay on account of labor troubles.

Q. Labor troubles in the spring of 1941. Do you recall any weather conditions causing delays in the fall of 1941?

A. No.

Q. And were there any labor difficulties in that connection in 1941?

A. Not to my knowledge.

Q. Now, you have testified, as I understand it, that there was not sufficient capacity to enable the water carriers to deliver automobiles that would serve the capacity of the driveaways, motor vehicle driveaways, at Buffalo, is that correct?

A. Well, if it was available they didn't make it available to us. The cars still set there.

Q. What capacity will be sufficient, or would have been sufficient during 1941? How many automobiles per day would it have been necessary for the water carriers to transport in order to serve the motor vehicle driveaways to their full capacity?

A. I can't answer you.

Q. Can you tell us, what water carrier capacity would have been necessary to serve the greatest number of automobiles tendered for shipment at Detroit, consigned to Buffalo, at any time during 1941?

A. I wouldn't know the number. All I know is that there isn't even sufficient boats now to give us the service.

284 Q. What will be sufficient?

A. I would say it would take several more boats.

Q. How many?

A. At least five or six more boats.

Q. And what is the total capacity?

A. I would say 400 cars per boat.

Q. How many boats?

A. Five or six.

Q. Five or six more. How many are there at present?

Mr. FOSTER. Mr. Examiner, the witness has testified that he knows that service was not given. Now, as to what is the number that would be necessary to take care of this service, I think is wholly immaterial in this case.

Mr. LEWIS. I think we are entitled to explore the basis of this witness' testimony and his knowledge.

Mr. FOSTER. I think it is going pretty far afield. We ought to know what would be necessary to meet his requirements.

Exam. MCGRATH. We are not going to cover that entire field. There are only two applications on file here for certain operating rights. It seems to me the question is going far afield.

Mr. FOSTER. I think it is going pretty far afield. We object to it as being greatly beyond the scope of the direct examination.

285 Mr. EISEN. I just want to indicate, Mr. Examiner, that I have been objecting to these on direct and they have been permitted to go in on direct but when we endeavor to cross on the direct Mr. Foster objects on the very ground that I objected on direct.

Exam. MCGRATH. This is going into speculation as to the future.

Mr. EISEN. Sure it is. That is the reason for the objection.

Exam. MCGRATH. And we are dealing with a peculiar situation so far as the facts establish that situation during the past. Any further question in cross examination?

Mr. ELDRED. Yes.

Q. Are you authorized by the Commission as a motor carrier, Mr. Davis?

A. Yes, sir.

Q. At what points can you originate traffic?

A. I haven't got the copy of my certificate.

Q. Don't you know at what points you can originate traffic?

A. I can originate out of Detroit.

Q. Yes. During the season of open navigation in 1940 and 1941 did your transport motor vehicles from Detroit?

A. No.

Q. I mean the situation did not get serious enough at any time for you to go in and drive a truck or a car away from Detroit?

286 A. The situation was bad enough. If I was able to come into Detroit I would have.

Q. Didn't you have authority to?

A. I didn't have the equipment to take care of it.

Q. I thought you said some days your equipment was idle then?

A. Yes; for 24 hours but it takes four days to come to Detroit and get a load of cars.

Q. From Buffalo?

A. Yes. We have to come through the states and it is 365 miles. We have to depend solely on the boats during the season of navigation.

Q. You operate from Detroit during other seasons, don't you?

A. Not into New England, no. We only operate during the closed season of navigation from Detroit to points and places in New York State.

Q. You do not go to Connecticut at all?

A. No.

Q. What is the reason there?

A. I haven't the authority.

By Exam. McGRATH:

Q. Do you hold a certificate as a common carrier by motor vehicle?

A. Yes, sir.

Q. To transport automobiles; is that right?

A. That is right.

By Mr. ELDRED:

Q. Did you haul any from Detroit to New York during this season that you complained of?

287 A. No. I am complaining about the season of navigation.

Q. That is right. That is what I am referring to.

A. And I never come into Detroit with trucks during the season of navigation.

Q. Isn't it a fact that if you obtained a little more equipment that you would be in a better position to handle this traffic?

A. No.

Q. Why wouldn't you?

A. I couldn't maintain the service that the boat companies give. It would be an unprofitable operation all the way round to come in here.

Q. In other words, you want the boat companies to put on enough to suit you but you don't want to put on enough to suit the boat companies, is that it?

Mr. FOSTER. Just a minute. I object to that question. It is wholly immaterial.

Exam. McGRATH. Objection sustained.

By Mr. ELDRED:

Q. Why is it you haven't put on additional equipment, Mr. Davis?

Mr. FOSTER. Mr. Examiner, I object to that.

Exam. McGRATH. Objection sustained.

Mr. FOSTER. Not having any bearing whatever on this witness' direct examination or on this application.

By Mr. ELDRED:

Q. If the Nicholson Universal or the D. & C. or both of them together put on three additional boats to take
288 care of these three boats that are owned by the McCarthy Steamship and Automotive to capacity would that meet your needs?

Mr. FOSTER. Just a moment, Mr. Examiner, I am going to object to that question. There is absolutely no showing about what they are going to do and to ask a question about what somebody else may possibly do in the future is not material in this case.

Mr. ELDRED. Mr. Examiner, I want to find out what this man wants.

Exam. McGRATH. He is not asking anything. He is appearing here merely as a witness.

Mr. ELDRED. For what?

Exam. McGRATH. To testify to the facts. What he wants has no bearing whatever here, Mr. Eldred.

Mr. ELDRED. What is he testifying here for?

Mr. FOSTER. You heard his testimony.

Mr. EISEN. He stated, Mr. Examiner, that—

Exam. McGRATH. He is engaged, as I understand it, in the driveaway or truckaway operation.

The WITNESS. Truckaway and driveaway; yes, sir.

Exam. McGRATH. By motor vehicle.

Mr. ELDRED. Yes. He is complaining here about the service rendered by the steamship companies. Now I am asking him what he wants out of the steamship companies? If the two existing companies would put on three additional boats, would
289 that satisfy his needs? I think it is a perfectly legitimate question and fair question.

Mr. FOSTER. It has no bearing here whatever. I mean there is now showing that they intend to put on any additional boats. He has simply testified that the service that was given in 1940 and 1941 with the then existing facilities was not sufficient. Now, as to whether he would be satisfied if they put on these additional boats, certainly that has no bearing and goes way beyond the scope of the direct examination.

Exam. McGRATH. It seems so to the Examiner.

Mr. ELDRED. Then do I understand that his testimony is solely that the service in 1940 and 1941 was not satisfactory?

Exam. McGRATH. Well, the testimony will speak for itself.

Mr. FOSTER. Yes; you can analyze that.

Exam. McGRATH. You cannot expect me to tell you what it means.

Mr. FOSTER. I am not going to agree what his testimony means.

Mr. ELDRED. All right.

Exam. McGRATH. Any further questions?

Mr. FOSTER. No further questions.

Exam. McGRATH. You are excused, sir. Next witness.

H. P. BLIGHT was sworn and testified as follows:

Direct examination by Mr. FOSTER:

Q. Please state your name.

290 A. H. P. Blight.

Q. Where do you reside, Mr. Blight?

A. 605 Industrial Bank Building, Flint, Michigan.

Q. And with whom are you connected?

A. F. J. Boutell Driveaway Company, Inc.

Q. And in what capacity?

A. Traffic manager.

Q. Will you explain, Mr. Blight, just what your duties are as traffic manager of this company?

A. General management covering operations and rates and tariffs.

Q. And what is the business of the Boutell Driveaway Company?

A. Transporting by truck and driveaway motor vehicles cam chassis, trucks and we have got a couple of gun permits which are rather minor.

Exam. MCGRATH. From and to what points?

A. On the operation?

Q. Yes.

A. We have points of origin out of Flint, Pontiac and Detroit, Michigan, Toledo, Ohio; secondary and subsequent operations out of Cleveland, Ohio, Erie, Pennsylvania, Buffalo, New York.

By Mr. FOSTER:

Q. And generally to what destinations?

A. From Michgian east to the co[illegible] south to——

Exam. MCGRATH. Which coast?

The WITNESS. The east coast, excuse me. South to the Ohio-Kentucky line by truckaway, following the line of the canal to

291 West Virginia and border line of Virginia and Maryland and Washington, D. C. We also have driveaway rights in the State of Indiana and Kentucky.

By Mr. FOSTER:

Q. Is your operation such that it requires you to drive a large number of automobiles from these points of origin in Michigan to the automobile loading docks at Detroit?

A. It is.

Q. And what automobiles do you handle to the automobile docks at Detroit?

A. Well, practically everything there is. Our big volume operation is in Buick, Pontiac and Chrysler products.

Q. And do you also operate under joint or proportional rates with these water carriers out of the ports of Cleveland and Buffalo?

A. Yes, joint through rates with the Lake Erie Tariff Bureau.

Q. With the Lake Erie Tariff Bureau?

A. Yes.

Q. And the Lake Erie Tariff Bureau consists of what companies?

A. The D. & C. Company and the Nicholson Steamship Company, Great Lakes Transit and their motor carrier connecting lines, of course, are parties to those tariffs.

Q. Now, in your position as traffic manager of this company have you acquired a knowledge as to the general facilities used by the water carriers on Lake Erie in the transportation of automobiles?

A. Fairly well, I think.

Q. How long have you been connected with this drive-

292 away company?

A. Twelve and a half years.

Q. Now, have you had any delays in having automobiles forwarded from Detroit to either Cleveland or Buffalo for shipment beyond by your company?

A. Yes, sir.

Q. And during the season of 1940 and 1941?

A. Yes.

Q. And by which carriers?

A. Well, I think that has occurred with all of them due to their peak loads. A minute ago when you asked me about my connection in bringing them to the dock, I have branch offices, of course, at these other ports and I forward them copies of my waybills on everything moving to the docks so that my branch offices are familiar with the movements that are coming forward so they know what to look for.

Q. Then a large number of these automobiles which you bring into Detroit to the water carriers are subsequently handled by you beyond?

A. That is right.

Q. Can you tell us just exactly what your experience was in connection with these delays during the season of 1940 and 1941 with the Detroit & Cleveland Navigation Company and the Nicholson-Universal Steamship Company?

A. Well, the freshest in my mind was back in November

293 of 1941, of course. We were running kind of a little Flanagan schedule right then due to weather conditions and volume of traffic. I recall now particularly in Detroit where at

one time I had over a hundred cars in my yard for the port of Cleveland released by Chrysler for winter movement because the service would then be shut off and I had requisitions from my dealers to deliver to the boat lines and I delivered to the boat lines. Then again I had to come and pick up a lot of those cars and take them to destination.

Q. Why was that?

A. Because the service had been suspended and on another occasion there because of the volume at the dock being too great at that particular time to move forward by boat.

Q. At which dock was that?

A. That would include all the docks, both Buffalo and Cleveland.

Q. In other words, the docks here were so crowded that you moved some of these automobiles direct to destination by motor transport?

A. That is right. And then, of course, some that I had brought in from upstate, I had to come in and divert shipments and pick them up. That is, shipments had been routed by the Buick and Pontiac motor companies via boat and they diverted the shipments and I had to come in and pick them up and take them to destination.

Exam. McGrath. By boat through what ports?

A. The big shipments of Buick and Pontiac were principally to Buffalo proper.

294

Q. The Buicks and Pontiacs are made in Michigan?

A. That is right.

Q. And they were shipped from what port?

A. Detroit.

Q. And they were destined to what points,—points in the East?

A. East of Buffalo.

Q. And they were brought to the port of Detroit for transshipment via water?

A. That is right.

Q. For Buffalo?

A. Right.

By Mr. Foster:

Q. And you say that the facilities were such that they could not be moved and you had to divert them and ship them by motor truck?

A. That is right.

Q. And that was after they were delivered at the docks of the water carriers, of these water carriers?

A. Yes, sir.

Exam. McGRATH. Was that during the season of open navigation when that occurred?

The WITNESS. Yes, sir.

By Mr. FOSTER:

Q. Are you acquainted and are you familiar with the steamers Mead, T. J. McCarthy and Ingalls?

A. Fairly well.

295 Q. And you know that they have been operated on Lake Erie under some arrangement between the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company and the D. & C. in past years?

A. Yes.

Q. Now, did you have any occasion during the season of navigation to divert automobiles from one dock to the other, that is, from one of these water carriers to the other?

A. No; I can't say as to that.

Q. You don't recall any such experience?

A. No.

Q. Now, you say that when you moved the car from one of the outlying Michigan cities to Detroit for transportation by water and then transportation by your own units beyond, that you forwarded to Cleveland or Buffalo, as the case might be, the details of that movement?

A. Yes.

Q. And what did you say in relation to that as to the delay in the transportation of those automobiles?

A. Well, I know in the latter part of November particularly I had considerable calls into Buffalo by dealers beyond wondering where the cars were and, of course, my Buffalo office had my forwarding bills and it shows when they moved to the dock in Detroit and my Buffalo office, of course, always keeps in contact with the branch offices of the boat lines there, that is getting

296 their arrival notices and checking on movements through the port.

Q. And did you make a personal investigation to determine if those cars had or had not moved?

A. Yes.

Q. And what did you find?

A. Well, I know on one occasion that I wrote all my branches and told them to check these cars with a fine tooth comb because they were sitting at these various lines, waiting to come forward, to check them for damages and shortages and what not because we were picking them up for beyond.

Q. They were sitting at the dock shed in Detroit?

A. That is right.

Q. And is that on the docks of the D. & C. and Nicholson Universal?

A. Yes; the assembly yards for those various docks.

Q. Now, from your knowledge of the manner in which these automobiles were handled on Lake Erie during the season of 1940 and 1941, I will ask you whether or not, in your judgment, the other water carriers could have handled those cars if they had not had the facilities of the three Automotive Trades Steamship and T. J. McCarthy Steamship Company boats to handle during 1940 on Lake Erie 77,741 automobiles and during 1941, 85,493 automobiles?

Mr. EISEN. The same objection, Mr. Examiner.

Exam. MCGRATH. You may answer the question and give
297 the basis for your answer.

The WITNESS. I don't think they could. In fact, they would go back further than 1940 if it was not for the foresight of Mr. McCarthy in getting those boats. It even goes back prior to 1937, because I have had dealings with him personally. As I just said, I have been with Boutell twelve and a half years and he has operated boats prior to that time and some time prior to 1937, when he started collecting these boats to put them into his lake service. Now, our volume in the industry in 1937 was such that the companies could not have handled it with the boats they had then any more than they could have in 1940.

Mr. EISEN. The same objection. We haven't had any basis.

Exam. MCGRATH. Have you stated fullly the basis for your answer?

The WITNESS. Well, I might add to this extent, that the volume in 1937 in the automotive industry was comparable to their volume in 1941, that is, in round numbers.

Exam. MCGRATH. Is that all on direct?

Mr. FOSTER. That is all.

Exam. MCGRATH. Cross-examine.

Cross-examination by Mr. EISEN:

Q. Mr. Blight, is it your position that all the delay is attributable or was attributable during 1940 and 1941 wholly to the steamship companies?

A. Oh, I wouldn't say that. It was during the peak load that comes upon all carriers in business at times.

298 Q. All carriers have the same peak difficulty?

A. That is right.

Q. It is a fact, is it not, that during the fall of 1940 and 1941 Boutell was so congested at Buffalo with automobiles that certain factories discontinued water carrying?

A. I wouldn't say that.

Q. Well, specifically, in 1941 didn't Pontiac discontinue water carrying shipments because Boutell was so congested at Buffalo?

A. I think for about a week they moved some of our stuff by rail.

Q. Is it not also a fact that in the fall of 1941 Noyes Buick in Boston——

Mr. FOSTER: Just a minute, Mr. Examiner. If he is going to go into what happened to some other carrier it is going beyond the scope of the direct examination.

Exam. MCGRATH. What is the relevancy of that? You already had this witness answer that his company during the peak movements could not handle the traffic. Why go into details about that? What is the relevancy of that with respect to these applications for service to operate as water carriers between particular ports?

Mr. EISEN. None, Mr. Examiner; no relevancy either to the direct examination, but inasmuch as the direct is in we have to cross-examine on it. I don't see any relevancy and did not see any relevancy on the direct.

Exam. MCGRATH. I don't recall anything on direct on
299 which you could cross-examine to that extent.

Mr. EISEN. Well, the witness said that the transportation was delayed because of disabilities of the water lines. I think I have a right to show that the disability was not the water line but in many cases it was the disability of the connecting trucker.

Exam. MCGRATH. I think he has answered that question, too.

Mr. EISEN. All right. I would like to make an offer of proof at this time, that through this witness I would show specific instances whereby the factories or consignees complained of delays not due to the steamship company but due to congestion of the connecting truckers.

Exam. MCGRATH. Any further questions?

Mr. LEWIS. Just a moment, please.

Q. Mr. Blight, you said, I believe, that the volume in 1937 was substantially the same as in 1941. Do you mean yours, that is, the volume of the Boutell Driveaway Company?

A. No; I mean in round numbers the industry compared to the years previously or immediately afterwards, there was a direct improvement.

Q. Have you got some figures with you or statistics that you can prove that?

A. No; not with me.

Q. What have you found, in your experience, as to how long a shut-off of service over the water carrier lines on account of weather conditions would last on the average, how many days?

300 A. You mean after operations have been instituted?

Q. Well, they shut it off and then they give service. How many days on the average?

A. Oh, two or three days but about enough to check routings through the factory.

Q. About how often when the weather was shut off across—about how often, when the service is shut off across lakes, were the shipments routed over the road?

A. During the period I talked about?

Q. Yes.

A. It was just that once, I think, last year.

Q. Was that the only time last year?

A. Because of the weather that they would shut off traffic during the navigable season.

Q. It was unusual, then, for them to route shipments that were being delayed over the road? Ordinarily, if there was a weather shut-off across the lakes the cars would be allowed to stay on the lots?

A. That all depends on your shipper. That is why I say they sent me in to divert them and get them to destination.

Q. But in your experience that only happened once?

A. That again comes with your volume and market. It is a variable factor.

Q. Did it happen more than once with you?

A. Oh, yes.

301 Q. That is, you had diversion requests more than once?

A. Oh, yes.

Q. And in many cases no such attempt was made; they were just allowed to accumulate and that created a peak, didn't it, on the water lines?

A. That may be true but again it is your market demand and whether your shipper wanted them at destination.

Mr. LEWIS. That is all.

Exam. MCGRATH. Any further questions?

By Mr. ELDRED:

Q. Mr. Blight, how long have you known Mr. McCarthy?

A. Have I?

Q. Yes.

A. Back in the early 20's.

Q. During this period that you have known him has he ever operated these boats in his own name, any steamships in the transportation of automobiles?

A. Yes. I remember his—well, I contacted him in his Detroit office when he set up as the T. J. McCarthy Steamship Company.

Q. And did he ever state the reason why he did not continue to operate in his own name?

A. No.

Q. Insofar as your company is concerned, are you interested in the ownership of the boats that transport the automobiles
302 or are you merely interested in a sufficient number of boats?

A. Connecting carrier service.

Q. So that if the existing carriers provided additional boats it wouldn't make any difference to you whose boats they were?

Mr. FOSTER. Now, Mr. Examiner, I have got to object to that question. Mr. Eldred comes back to it with every witness. It is wholly immaterial. It goes beyond the direct and what somebody else may do in the future is simply too speculative and has no bearing in this particular case; it just hasn't any.

Mr. ELDRED. I think it does, Mr. Examiner. I think we want to know what this witness wants. All you have been talking about here is that if these three boats do not operate the transportation on the Great Lakes would fall flat.

Mr. FOSTER. I am not arguing that at all.

Mr. ELDRED. That is what you have been asking every witness, "If you did not have these three boats operate could the automobile transportation function"? And all I want to know is whether it makes any difference to these witnesses who are complaining here who owns the boats?

Exam. MCGRATH. Answer that question, please.

The WITNESS. Will you state it again, please?

Mr. ELDRED. Please read the question, Mr. Reporter.

(Question read)

A. I might answer that by saying "No" and qualify it, that I think that depends upon our shippers whether they would render that service fast enough. It might put us in the posi-
303 tion of having virtually faster boats.

Q. If they were operated by the two existing carriers——

Mr. FOSTER. Now he comes to the two existing carriers. One of the existing carriers had these boats and asked the owner to take them back.

Mr. ELDRED. There is no testimony that they have been asked. Mr. McCarthy did not testify to that. I am objecting to that statement going on all day. Mr. McCarthy more or less testified that he asked to have the boats released.

Exam. MCGRATH. Well, he has answered your question. Now, what further do you want?

Mr. ELDRED. Nothing further.

Exam. MCGRATH. Any further questions?

Mr. FOSTER. That is all.

By Exam. McGRATH:

Q. Mr. Blight, what is the status of the F. J. Boutell Driveaway Company under the Motor Carrier Act? Has it been granted a certificate to operate as a common carrier under the Motor Carrier Act?

A. Yes, sir; MC-3648.

Q. And you have stated generally the territory where you operate?

A. We are operating under Sub. 1, 2, and 3, T. A. under No. Sub. 5.

Exam. McGRATH. That is all, sir, you are excused. Next witness.

Mr. FOSTER. I want to ask this witness possibly one more question—no; no more questions.

304 Exam. McGRATH. All right, you are excused.

J. R. DEPLANCHE was sworn and testified as follows:

Direct examination by Mr. FOSTER:

Q. Please state your name and address.

A. J. R. DePlanche; Buffalo.

Exam. McGRATH. Are you connected with one of these driveaway companies?

The WITNESS. Yes.

Exam. McGRATH. Isn't this evidence becoming purely cumulative? We have had three witnesses now connected with these driveaway companies.

Mr. FOSTER. They cover various and different territories, Mr. Examiner. Some of their territories overlap. I don't think it is cumulative and I think they deal with all these companies.

Exam. McGRATH. Well, I will let you go ahead but it looks to me as though it is kind of cumulative.

By Mr. FOSTER:

Q. Will you state your residence?

A. Buffalo.

Q. And with what company are you connected?

A. M. & G. Convoy.

Q. Does this company operate out of Buffalo east?

A. It operates out of Buffalo to points in New York, New Jersey, Pennsylvania, Maryland, Delaware, and the District of Columbia.

305 Q. And does it hold a certificate from the Interstate Commerce Commission?

A. For common carriage.

Q. It operates as a common carrier?

A. Yes, sir.

Q. Do you have joint and proportional rates with the water carriers?

A. With the Lake Erie Tariff Bureau.

Q. How many units does your company operate?

A. About 120.

Q. About 120 units?

A. That is right; that is capacity.

Q. And do you have any operating rights out of Detroit?

A. We do.

Q. Where to?

A. To the same territory.

Q. To the same territory?

A. That is right.

Q. And during the summer months do you serve that territory primarily out of Buffalo?

A. That is right, we do.

Q. And so served it in 1940 and 1941?

A. We did.

Q. Now, in your position with the M. & G. Transport are you familiar with the water facilities generally on the Great Lakes?

A. Yes; I deal with the boat lines at Buffalo.

Q. And what three boat lines serve Buffalo?

A. Most of our dealings are with Nicholson and D. & C.; mostly D. & C.

Q. About how many automobiles would you say, Mr. DePlanche, that you handled out of Buffalo during the open season of navigation?

A. In any particular season?

Q. Say the season of 1941.

A. I would judge possibly 15,000; 12 to 15 thousand.

Q. That is to these various destinations?

A. That is right.

Q. I will ask you whether or not on the cars which were routed over the water carriers and M. & G. Convoy Company you experienced any delays in 1940 and 1941?

A. We did.

Exam. McGrath. Water carriers operating from and to what ports? Will you give that?

By Mr. Foster:

Q. From Detroit to Buffalo.

A. We did experience delays.

Q. And did you personally check the cause of those delays to determine why there were these delays?

A. I have had conversations with Mr. McCarthy over the telephone asking him to get the cars over and he has told me that the boats were running to capacity.

307 Q. And did you have conversations with anyone else connected with any other water carriers?

A. No; I did not.

Q. Now, do you know generally what automobile boats were operated on Lake Erie?

A. I have some knowledge.

Q. And what boats were they?

A. The "Tremaine," the "Fitch," the "Mead," and the "Ingalls" and "Woodruff" and a couple of passenger boats.

Q. On these passenger vessels, during the season of navigation during the summer months, I will ask you if they also handled tourists' automobiles?

A. They did.

Q. You know that of your own knowledge?

A. They have taken mine, my personal car.

Q. Have you seen applicants' exhibit 24, Mr. DePlanche?

A. I believe I did.

Q. Now, exhibit 24 here shows that there was transported on the steamer George W. Mead during the season of 1940 between Detroit and Buffalo 14,853 cars, by the steamer "T. J. McCarthy" 23,771 and by the Steamer "George H. Ingalls" 20,674 and during the season of 1941 via those same vessels in the order named 13,552, 28,717 and 27,723. I will ask you whether or not from your knowledge of the transportation of automobiles between the ports of Detroit and Buffalo, if, in your judgment, those

308 automobiles could have been transported via the other carriers had they not had the facilities of the three boats mentioned?

Mr. EISEN. Did you finish your question, Mr. Foster?

Mr. FOSTER. Yes.

Mr. EISEN. The same objection.

Exam. MCGRATH. Answer the question and give the basis for your answer.

The WITNESS. I don't believe that there would have been enough facilities without these three boats.

Exam. MCGRATH. Why not.

The WITNESS. If the boats were not run to capacity they would have brought the cars consigned to us consigned for forwarding beyond Buffalo a little bit faster to us.

Exam. MCGRATH. Is that all, Mr. Foster?

Mr. FOSTER. That is all.

Exam. MCGRATH. Cross examine.

Cross-examination by Mr. EISEN:

Q. Of these 12 to 15 thousand cars handled, how many moved via the D. & C.?

A. Upwards of 85 percent I would think.

Q. So if the other carriers had capacity they could not have brought those 85 percent or better than 85 percent to you any faster?

A. Well, with what few there was moved over Nicholson we also experienced some delays there.

309 Q. Do you have any delays in connection with your own operations in the carrying of cars?

A. No, we have never had any trouble except with the weather maybe for a few hours, have a storm and some of my boys may be tied up on the road. We have had no labor troubles.

Q. You have always had enough equipment during the peak season to immediately take the cars away from Buffalo when they were brought in?

A. Not when they were brought in; no.

Mr. EISEN. That is all.

Exam. MCGRATH. Any further questions?

Mr. ELDRED. No questions.

Exam. MCGRATH. That is all, sir.

Mr. FOSTER. Now, Mr. Examiner, we do have two other forwarder witnesses and I will agree that their testimony will be cumulative.

Exam. MCGRATH. Well, then, if it is going to be cumulative I will tell you that we have received sufficient of that character of testimony.

Mr. FOSTER. It covers a slightly different territory.

Exam. MCGRATH. Even so.

Mr. FOSTER. Service at the other end.

Exam. MCGRATH. Maybe the parties will agree with you that if they were called they would testify to the same general effect that the previous witnesses representing similar

310 companies testified to. Off the record.

(Discussion outside the record.)

Mr. FOSTER. The men that I was going to call were Mr. Joseph Wilkie of the Wilkie Carrier Company and Mr. Richard Allen of the Bolin Driveaway Company, operating out of Cleveland and Detroit.

Mr. ELDRED. Where does Wilkie operate out of?

Mr. FOSTER. Out of Buffalo.

Mr. ELDRED. To where?

Mr. FOSTER. To the eastern states, covering I don't know just how many.

Exam. McGRATH. Well, have you got everything in the record you want to state now with respect to those witnesses if they were called and testified?

Mr. FOSTER. With respect to those witnesses, yes. Simply if they were called that they would testify the same. Is that right?

Mr. EISEN. I have no objection.

Mr. ELDRED. I have no objection to that stipulation going in.

Exam. McGRATH. Is there any further testimony now to be offered by applicants?

Mr. FOSTER. Yes. Take the stand, Mr. McCarthy.

T. J. McCARTHY, recalled as a witness herein, having been
311 previously duly sworn, was examined and testified further as follows:

Direct examination by Mr. FOSTER:

Q. Mr. McCarthy, there has been considerable testimony on cross examination of witnesses as to the possibility of the Detriot & Cleveland Navigation Company or someone else putting on additional boats. Now I ask you whether or not as you acquired first the "Mead" and later the "Ingalls" if you did not offer those boats to the D. & C. and request that they themselves acquire them?

A. I did.

Q. And what was their answer to that?

A. That they did not want any more boats or did not want to participate in the investment in any more boats due to the fact that they had not made any money for several years with their passenger boats.

Mr. LEWIS. Will you fix the time of this? I don't know when he is testifying to.

By Mr. FOSTER:

Q. This was when you purchased the "Mead" in 1936?

A. When we purchased the "Mead" and later on when we purchased the "Ingalls" and "Tremaine."

Exam. McGRATH. During what years?

The WITNESS. In 1936. And that there might be some stockholder objection due to the fact that they had not made money
312 with the boats that they were operating and, therefore, they did not want to run into that condition or have that develop.

Mr. LEWIS. Mr. Examiner, I object to this as immaterial to the issues here; what occurred back in 1936 is irrelevant to any issues involved in these two applications.

Mr. FOSTER. Mr. Examiner, I think it has a very important bearing. These protestants here are saying that these companies,

who would be forced to go out and acquire boats to serve this particular trade, that they would now——

Mr. LEWIS. 1936 hasn't any bearing on this.

Mr. FOSTER. That is when he purchased the boats.

Exam. McGRATH. Well, he has answered that question now and it is on the record.

Mr. FOSTER. Yes.

Q. And in order to handle the automobiles which you actually solicited under your solicitation agreement with the Detroit & Cleveland Navigation Company it was essential that you go out and purchase these boats with which to handle it, is that right?

Mr. EISEN. I object to that. Counsel has been testifying in connection with every witness. No witness who testified, no witness who took the stand this morning testified to anything.

Exam. McGRATH. Reframe your question.

Mr. FOSTER. Strike the question.

Q. Was it necessary, Mr. McCarthy, in order to handle on
313 Lake Erie these automobiles which you solicited that you purchase vessels and convert them for that purpose?

Mr. EISEN. I object to that. That is the same question.

The WITNESS. It was necessary.

Mr. ELDRED. It has no bearing on the issues here.

Mr. SULLIVAN. It is irrelevant.

Mr. EISEN. It only calls for yes or no answer. Counsel is still testifying.

Mr. FOSTER. What is the objection?

Mr. ELDRED. It has no bearing on the issues at all.

Exam. McGRATH. You are undertaking to answer something which was brought out on cross-examination. What is the materiality? You are making that more important than perhaps it merits.

Mr. FOSTER. Mr. Examiner, I think this is very important. I mean these protestants have clearly shown from their cross-examination of these intervenors that apparently it is their purpose to have Mr. McCarthy sit back in the hope that they will offer him some kind of a deal and until they do that he has just got to do that. That apparently has been their attitude all the way through and I think the background of the whole situation is important to bring before the Commission.

Mr. EISEN. Isn't the application and the record the best answer to that statement, Mr. Examiner?

Mr. ELDRED. I might make this observation: There is
314 nothing to prevent the present applicant from getting any business for himself, at the present time. There has been no showing of coercion here, that he had to go with the D. & C. at that time.

Mr. FOSTER. I am going to develop that with this witness because that question always has been brought up and it is in the nature of rebuttal.

Mr. ELDRED. There has been no direct testimony.

Mr. EISEN. This is not rebuttal.

Exam. McGRATH. I am wondering whether you are not anticipating the evidence that may be presented by protestants.

Mr. FOSTER. No. They have brought it out on cross-examination from some of our own witnesses.

Mr. ELDRED. What has anything that happened in 1937 and 1938 got to do with the grandfather operation of this applicant here?

Mr. FOSTER. I will tell you. I will state to the Examiner exactly what I propose to prove in direct examination. In 1937—and I am quite sure no one had any idea as to just what form the transportation would take—I mean as to just what form the Transportation Act would take if it was passed or if it was not passed—a five-year contract was entered into between the T. J. McCarthy Steamship Company and the Detroit & Cleveland Navigation Company. That contract is in there as an exhibit. That was an
315 exclusive contract requiring Mr. McCarthy to devote his entire time to the solicitation of automobiles for the Detroit & Cleveland Navigation Company.

Also, at the same time in 1937, Mr. McCarthy chartered the "Tremaine" and the "Mead," or his companies did, to the Detroit & Cleveland Navigation Company. Under the terms of those charters the Detroit & Cleveland Navigation Company had the right from year to year to exercise those options and they did exercise them up to and including the charter for the year of 1942, which later by mutual agreement, as Mr. McCarthy says, was terminated.

Now, I say that all of that is a very important background. Mr. McCarthy was required to purchase these boats, convert them for the automobile traffic to handle these automobiles which he already solicited and on which he received a definite percentage of the gross freights irrespective of whose bills of lading they were operated on and it is important to bring out all of those facts to this Commission for whatever bearing it may have here.

Exam. McGRATH. What facts do you want to bring out that have not been brought out?

Mr. FOSTER. That it was absolutely necessary for him to buy the boats; that the Detroit & Cleveland Navigation Company would not buy them.

Exam. McGRATH. Well, hasn't he answered that question?

Mr. FOSTER. Yes.

316 Exam. McGRATH. What further questions do you want to ask him along that line?

Mr. FOSTER. And that the situation was that he was not permitted to solicit business or go in business for himself during the life of those contracts.

Exam. McGRATH. Isn't that shown by the documentary evidence?

Mr. FOSTER. They are of record.

Exam. McGRATH. Have you any other facts you want to develop along that line through the witness McCarthy that have not been already fully covered?

Mr. FOSTER. That perhaps is covered in the exhibits. The thing I did want to bring out is that they had refused to invest any money in vessels and it was necessary that he do it.

Exam. McGRATH. Well, he has answered that question.

Mr. FOSTER. That is right.

Q. Now, at the present time, Mr. McCarthy, you do have available for the transportation of automobiles under your published tariffs the steamer "T. J. McCarthy" in the Automotive Trades Steamship Company and the steamer "George W. Mead" in the T. J. McCarthy Steamship Company; is that right?

A. Yes, sir.

Q. Mr. McCarthy, were the financial statements of the Automotive Trades Steamship Company and the T. J. McCarthy Company, which are attached to and made a part of your amend-

317 ment to the original application and shown on each application as exhibit BWC–B–V, prepared under your direction?

A. Yes.

Q. And do those statements reflect the true condition of the respective companies as of the 30th day of September 1941?

A. Yes, sir.

Mr. FOSTER. Mr. Examiner, we wish to offer in evidence as a part of the record those financial statements and such of the persons as are here who desire copies of them, we can furnish them although we haven't them with us at this time.

Exam. McGRATH. Do you want to have them made part of the record by reference; is that it?

Mr. FOSTER. Yes; we want them made part of the record by reference.

Exam. McGRATH. Is there any objection to that procedure, providing the parties be furnished with copies?

Mr. FOSTER. We will be glad to furnish anyone with a copy who desires it.

Exam. McGRATH. All right, that motion is granted with the understanding, of course, that you will furnish the parties with copies. Can you do that during the course of the hearing?

Mr. FOSTER. I think we can, if the hearing goes over until tomorrow, as it looks very much that it will. During the course of the hearing we can furnish them with copies.

Mr. Examiner, that is the applicants' case.

318 Exam. McGRATH. Are there any questions on cross-examination of the witness McCarthy?

Mr. ELDRED. I just have one question.

Cross-examination by Mr. ELDRED:

Q. In any of these agreements is there any requirement that you furnish ships in any way so that they may be chartered to the D. & C. Navigation Company?

A. Well, they have been chartered.

Q. Yes; but I mean in the agreement that you made with them, between yourself and the Detroit & Cleveland Navigation Company in connection with the solicitation of traffic, in those agreements was there any requirement that you would furnish steamers which would be leased to the D. & C. Navigation Company?

A. Yes; that was my privilege.

Q. Your privilege?

A. Yes.

Q. But there was no compulsion, was there?

A. No compulsion.

Q. No. And you purchased these boats, I presume, with the thought that you would make a profit on them, is that correct, sir?

A. Yes. There is nothing wrong with that.

Mr. ELDRED. That is all, sir.

Exam. McGRATH. Any further questions on cross-examination?

319 Mr. FOSTER. Just along that line.

Exam. McGRATH. You have a question on redirect?

Mr. FOSTER. Yes, on redirect.

Redirect examination by Mr. FOSTER:

Q. Mr. McCarthy, you purchased these vessels because it was absolutely necessary to have them in order to service the accounts which you had solicited and obtained, is that not so?

Mr. ELDRED. I object. It is a leading question of the same type.

Exam. McGRATH. Answer the question.

The WITNESS. I was working for all the automobiles that I could get for the D. & C. Navigation Company and we didn't have sufficient capacity to carry the cars, the D. & C. would not furnish

the boats and it was on that basis that I went out and got them, because I had worked and there was no use of working unless you had some way to collect on the efforts of your work and you couldn't do it without equipment and the D. & C. were not willing to furnish the equipment or help in the financing at any time.

By Mr. FOSTER.

Q. As a matter of fact, is it not so that it was necessary to add to the D. & C.'s original facilities the first year that you went there?

A. That is absolutely so.

320 Q. And you did do that, as shown by an exhibit, on a profit-sharing basis?

A. On a profit-sharing basis right from the start. What we did was get facilities of some kind to carry the business so that we could collect on our efforts and labor for the service that our customers asked for.

Mr. FOSTER. That is all.

Exam. MCGRATH. Any further questions?

Q. Mr. McCarthy, I have one or two questions. I don't recall from reading the record whether you have shown the horsepower of these steamships owned by the applicants.

A. I believe that they are in an exhibit somewhere but I will furnish that if it is not shown there.

Q. You think it is of record?

A. I think it is of record but I will make sure and bring that in, too.

Q. Just to make the record definite, are these all self-propelled vessels, the three vessels that you described?

A. Yes; they are all self-propelled vessels.

Q. Now, in the financial statements that have been made part of the record you show that both applicants reserved for depreciation certain amounts.

A. Yes, sir.

Q. Can you tell us how that depreciation was computed? What rate of depreciation was used and what length of service was

321 set up for the vessels?

A. We estimated the life of the boilers and set up our depreciation on a basis of 10 years and on the hulls on the basis of 20 years, which is the accepted practice in vessels of that age. And the value of the boiler as against the—the boilers and machinery as against the hulls is two-thirds hull and one-third machinery. So we depreciated the one-third on the boilers and machinery over a period of 10 years and on the hulls over a period of 20 years; 5 percent on the hulls and 10 percent on the boilers.

Q. And what did you use as the value of the steamships?

A. The actual cost, plus our conversion cost. The purchase price of the vessel plus our conversion cost.

Exam. McGRATH. Off the record.

(Discussion outside the record.)

Exam. McGRATH. That is all. Now, is that the applicants' case?

Mr. FOSTER. Yes.

Exam. McGRATH. We will take a few minutes recess.

(Whereupon a short recess was had.)

Exam. McGRATH. All right, protestants may proceed.

Mr. EISEN. With the consent of counsel for the applicants, Mr. Examiner, I would like to ask that the following testimony of witness Hewitt in docket No. W-732, Nicholson Transit
322 Company, application for authority to operate as a contract carrier by water, taken at the Washington, D. C., hearing on September 9, 1941, and September 10, 1941, be incorporated into this record by reference.

Exam. McGRATH. Pages what?

Mr. EISEN. Pages 162 to 226 and 229 to 272. Now, in connection with that, Mr. Examiner, to facilitate this record, if it will, I have copies of Mr. Hewitt's exhibits tendered in connection with that testimony, which I can either give to the Examiner or offer as an exhibit in this hearing.

Mr. FOSTER. We have those exhibits, too.

Mr. EISEN. I have copies.

Exam. McGRATH. Well, if you have a set for the Examiner I think it will be sufficient. You want to stipulate the witness' testimony as well as the exhibits that he presented, is that correct?

Mr. EISEN. That is correct, Mr. Examiner, with one exception, that exhibits 5 and 10—Mr. Hewitt introduced exhibits 1 through 10—exhibits 5 and 10 pertain wholly to Duluth operations and I am not giving the reporter a copy of them.

Exam. McGRATH. Well, you are not giving the reporter a copy of the exhibits on anything. I understand you are giving them to me for my use.

Mr. EISEN. Oh, I see.

Exam. McGRATH. You want to stipulate by reference the testimony and the exhibits that you mentioned, referred to in the testimony?

323 Mr. EISEN. That is correct.

Exam. McGRATH. And you have copies of those exhibits and you don't want them?

Mr. FOSTER. That is right.

Mr. EISEN. In other words, Mr. Examiner, the stipulation is that all of the testimony of Mr. F. L. Hewitt——

Exam. McGRATH. You have to specify that with particularity.

Mr. EISEN. I have. Also, Mr. Examiner, Mr. Hewitt's testimony beginning on page 150 and running to page 152.

Exam. McGRATH. Do you join in that stipulation, Mr. Foster?

Mr. FOSTER. I join in that stipulation subject to giving you the pages of Mr. Hewitt's further and subsequent testimony given at the adjourned hearing.

Mr. EISEN. If it is not included in there.

Mr. FOSTER. Yes, if it is not included in there.

Mr. EISEN. I have no objection to that.

Exam. McGRATH. Well, you will have to join with Mr. Eisen in the stipulation, Mr. Foster.

Mr. FOSTER. I do.

Exam. McGRATH. You will have to be specific at this time as to what portions of that record you want considered. We cannot leave to some future time something else.

324 Mr. FOSTER. It is all of Mr. Hewitt's testimony, direct, cross, redirect and recross.

Exam. McGRATH. And you have given the pages on which that testimony appears?

Mr. EISEN. Yes, sir.

Mr. FOSTER. Except at the adjourned hearing. I think there was further testimony at the adjourned hearing of the Nicholson Transit Company, which you heard here.

Exam. McGRATH. Yes, Mr. Hewitt testified at that hearing.

Mr. EISEN. I think I have it here.

Mr. FOSTER. I don't have the pages of them in there.

Exam. McGRATH. Off the record.

(Discussion outside the record.)

Mr. FOSTER. We will submit that to you, Mr. Examiner, the precise number of pages that are covered.

Mr. EISEN. And I concur in that statement.

Exam. McGRATH. All right. I want to ask now if Mr. Eisen agrees to supply a copy of the transcript of the record which has been stipulated later at his expense, if and when required by the Commission?

Mr. EISEN. Yes, sir; I do.

Exam. McGRATH. All right. Under the circumstances the Examiner directs the incorporation by reference of that testimony that has been referred to by counsel.

Mr. EISEN. Now, before we leave that, Mr. Examiner, I
325 have had prepared the same exhibits as were introduced at the last hearing, brought down to date, but we thought that there might be some objection. If any valid purpose is to be served thereby I have those exhibits. Otherwise we can forget about them.

Mr. FOSTER. I don't desire to have the further exhibits offered.

Exam. McGRATH. You do not desire to have any further exhibits?

Mr. FOSTER. No.

F. L. HEWITT, JR., recalled as a witness herein, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

Exam. McGRATH. You are testifying under oath, Mr. Hewitt?

A. Yes.

Q. You have been previously sworn?

A. Yes.

By Mr. EISEN:

Q. Mr. Hewitt, has there been any change in the vessel status since you testified at the hearings in September 1941?

A. Yes; there has. The steamer "Adam E. Cornelius" is no longer in our fleet; as itemized at that time. At the moment I cannot think of any other changes. Oh, I am sorry, there is. The steamer Richardson is no longer in the fleet as itemized
326 at that time. And the barge "Resolute" is no longer in the fleet as named at that time.

Q. And is the name of the "Woodruff" changed?

A. Yes; although I thought it had been changed prior to that date.

Mr. FOSTER. I think that is covered in that testimony.

Mr. EISEN. That is all.

Exam. McGRATH. Have you any questions to ask the witness, Mr. Foster?

Mr. FOSTER. No. I think that is the only possible change in the record.

Exam. McGRATH. Is that all you have, Mr. Eisen?

Mr. EISEN. That is all I have.

Mr. LEWIS. Mr. Arnold.

J. M. ARNOLD called as a witness herein, having been previously duly sworn, was examined and testified further as follows:

Direct examination by Exam. McGRATH:

Q. You have been sworn, have you? You testified in the prior hearing?

A. Yes.

Q. You are testifying here under oath?

A. Yes, sir.

By Mr. Lewis:

Q. What is your name?

A. J. M. Arnold, general freight agent, Detroit & Cleve-
327 land Navigation Company, 210 Wayne Street, Detroit, Michigan.

Q. Mr. Arnold, you are employed, are you, as general freight agent of the protestant, the Detroit & Cleveland Navigation Company?

A. Yes, sir; that is correct.

Q. And have you made a study of the business of the Detroit & Cleveland Navigation Company as affected by the rights sought by the applicants in this matter?

A. I have.

Q. Just describe briefly the nature of the business of the Detroit & Cleveland Navigation Company?

A. Well, the Detroit & Cleveland Navigation Company is a common carrier operating both—handling both freight and passenger business, with joint rates on lake and rail traffic, also handle port to port business, also the conduct of business in connection with truck lines, motortruck.

Q. Among other commodities, freight commodities handled by the D. & C.—and when I say "D. & C." I mean the Detroit & Cleveland Navigation Company—are there included automobiles?

A. There are.

Q. Will you just state the approximate amount invested by the Detroit & Cleveland Navigation Company in land, vessels, wharfs and other transportation facilities used on the Great Lakes?

A. Well, there was originally an investment of a little over $12,000,000 but there is a book reserve on that so that now it
328 is down to about $3,000,000.

Q. And it has a present book value of approximately $3,000,000?

A. Just about that.

Q. Will you describe the vessels now owned and operated by the D. & C. for the purpose of transporting automobiles on the Great Lakes?

A. You mean as of today?

Q. As of today.

A. Well, we have the "Fitch"—"William F. Fitch."

Q. What kind of vessel is that?

A. That is fit up exclusively for the handling of automobiles only. Of course, we do handle and can handle package freight in that same vessel.

Q. Yes.

A. We also have six combination passenger and freight vessels that can and do handle automobiles.

Q. Now, is there any need under present circumstances for the use by the D. & C. of the three boats that have been referred to here as the McCarthy boats, that is, the "Tremaine," the "Mead" and the "Ingalls"?

A. You mean as of now?

Q. As of the present time or as anticipated in the immediate future.

A. Well, I can't think of any need for any of it right now.

Q. Now, if the need arose in the future is the D. & C.
329 financially able to or financially in position to acquire such additional vessels as may be necessary?

Mr. FOSTER. Mr. Examiner, I submit that this man is not qualified to testify as to the financial situation of the company. He says he is the traffic manager.

Mr. LEWIS. And I have asked him and he has testified that he has studied the affairs of the company with respect to the question—I will ask him now whether he is familiar with the financial position of the company?

The WITNESS. Well, I——

Mr. FOSTER. Just a moment. Mr. Examiner, I submit that this man is not qualified to testify as to the financial situation of the company. They may have cash in the bank and they may have a dozen reasons for not wanting to invest it in boats. I submit that this man is not qualified, is not the qualified man to answer that type of question.

Mr. LEWIS. May I ask him a few more questions?

EXAM. MCGRATH. Yes; to qualify him.

By Mr. LEWIS:

Q. Have you examined the audited financial statement of the D. & C.?

A. I did look at their statement for 1940; yes.

Q. You are familiar in general with their financial resources?

A. Pretty generally, yes; in a general way.

Q. That is, as shown by their published financial statements?

A. In a general way.

330 Q. And from that knowledge is it your opinion that they are in financial position to acquire such additional vessels as may be needed to handle any automobile traffic that may be presented to them in the future?

A. I think I can best answer that this way: On February the 2nd I was in Washington——

Mr. ELDRED. What year?

The WITNESS. This year. February the 2nd, 1942, I was in Washington, called on Mr. Eastman personally, also——

Mr. FOSTER. Just a moment. The answer is not responsive. Let him answer the question and not make a recitation about Mr. Eastman back in February.

The WITNESS. And when I came back the following day——

Mr. FOSTER. Just a moment, Mr. Examiner. I want a ruling on that.

Exam. McGRATH. What is the relevancy of that in answering the question?

Mr. FOSTER. Yes; what is the relevancy?

The WITNESS. Do you want me to tell you?

Mr. FOSTER. He asked you a question and we would like to have you answer it.

The WITNESS. I am coming to it. I am coming to the thing that led up to this, why I didn't know about it on February 2nd but, Mr. Examiner, I did know about it the following day because when I came back my president sent for me; Mr. James
331 T. McMillan, and he told me all that had happened between himself and Mr. McCarthy.

Mr. FOSTER. Mr. Arnold, just a moment. That is purely hearsay, Mr. Examiner.

The WITNESS. He talked to me personally.

Mr. EISEN. He is not testifying to the conversation. He is testifying to the fact of the——

The WITNESS. Knowledge of what I know.

Mr. FOSTER. Mr. Examiner, if Mr. James T. McMillan had some conferences with Mr. McCarthy I don't want to get it through Mr. Arnold.

Mr. LEWIS. These are discussions that were made by the management.

Mr. FOSTER. Let the management testify.

Exam. McGRATH. Is that a fact?

Mr. FOSTER. No; that is not a fact.

Exam. McGRATH. Is that one of Mr. Arnold's duties?

Mr. LEWIS. Apparently so.

Exam. McGRATH. Is it, Mr. Arnold?

The WITNESS. I am supposed to keep informed all the time about the conduct of the business of our company in various ways. I get that information in direct conferences with our general manager and our president and that is the way I keep informed, otherwise I wouldn't know anything about our business and how
332 to conduct our business properly. I am in their confidence and, naturally he would call me in and this is what he told me.

Mr. FOSTER. Now just a moment, Mr. Examiner, I absolutely object to Mr. Arnold——

Exam. McGRATH. Well, the objection to the Examiner seems to be well taken.

Mr. FOSTER. Yes; telling what somebody else told him.

By Mr. LEWIS:

Q. Now, have you been informed in discussions with the other executive officers—I will withdraw that. Have you in conference with the other executive officers of the D. & C. arrived at a plan with respect to the acquiring of additional facilities for the transportation of automobiles if, as, and when the necessity arises?

Mr. FOSTER. Now, Mr. Examiner, I object to that unless it is shown here that this man here has the power to acquire them. Now he is talking about what he did with the other executives of the company.

By Mr. LEWIS:

Q. Is it a part of your function to plan with the other executive officers of the company with respect to the acquiring of facilities, transportation facilities?

A. I am consulted.

Q. You enter into the plan, do you?

A. I am consulted by them.

Q. Yes. And have you consulted with them with respect to automobile equipment?

333 A. Yes, sir.

Q. And what is the plan, if any, that has been arrived at?

Mr. FOSTER. Now, just a moment, Mr. Examiner. He is the traffic manager and if the executives of that company had consulted with him and the executives who have the control of the company have arrived at a plan, that is very well.

Exam. McGRATH. Off the record a minute.

(Discussion outside the record.)

Exam. McGRATH. Back on the record.

Mr. LEWIS. I will pass that.

Q. Now, the testimony shows, Mr. Arnold, that no one other than Mr. T. J. McCarthy as an employe of the D. & C. has solicited automobile traffic in behalf of the D. & C. during the period covered by the contracts, employment contracts which are in evidence in this case.

A. That is correct; yes. In fact, I would like to go on a little further there and say that I called on some of the trade, as Mr. Brennan testified today, but 1941 was the first time anybody outside of Mr. McCarthy had called on them that was Mr. Arnold, that is true, but Mr. McCarthy later on reminded me of the fact that he and he only was the nominal man to contact all the shipping public in connection with the automobile traffic.

Q. And it is provided for in his contract, is it?

A. Well, he is the solicitor and he gets the money and it is all paid to him on a stipulated sum in that contract.

334 Q. It was understood that no one other than Mr. McCarthy——

A. That he was hired for that job and he is the manager for the automobile division.

Q. And you do have other solicitors in the employ of the company?

A. Oh, yes.

Mr. LEWIS. No further questions.

Exam. MCGRATH. Any questions on cross-examination?

Cross-examination by Mr. FOSTER:

Q. Is the steamer "Fitch" owned by the Detroit & Cleveland Navigation Company?

A. It is owned by the Detroit & Cleveland Steamship Company, which is practically the same organization.

Q. That is, the D. & C. Navigation Company owns all the stock in the D. & C. Steamship Company?

A. Practically so.

Exam. MCGRATH. Is it a holding company, the D. & C. Navigation Company?

The WITNESS. I don't know what it is but I do know that they control it entirely.

Mr. FOSTER. I have no further questions.

Exam. MCGRATH. Any further questions?

Mr. LEWIS. No.

Exam. MCGRATH. All right, you are excused. Do you have some further testimony?

335 Mr. LEWIS. I have nothing further; no.

Exam. MCGRATH. All right. I will ask the protestants if they have any further evidence to offer?

Mr. EISEN. At this time, Mr. Examiner, may I ask for a continuance of the hearing to a week day other than Monday or Tuesday of next week? By "week day" I mean Monday through Friday.

Exam. MCGRATH. You may ask it but it won't be granted by the Examiner because the Examiner is scheduled to have a hearing here Monday. He could hear any testimony you may have to present tomorrow or Monday afternoon or Tuesday morning but after that he has to be on his way. He has to go to Lansing, Minneapolis, and back to Chicago and Indianapolis.

Mr. EISEN. May I state the purpose of that request, Mr. Examiner, is that in view of the testimony adduced today I desire to bring in and present as witnesses various truck connections of

the Nicholson Universal Steamship Company, as well as dealers and distributors of automobiles who control the routing of the cars that the traffic managers of the automobile companies testified to today and that those individuals, being located outside of Detroit, will not come into Detroit or travel from their home for a week end but that if the hearing was set between Monday and Friday they would be available. And with respect to Monday and Tuesday of next week, I have New York intrastate cases
336 and that Commission will not postpone a case unless you personally appear and offer a good reason at that time.

Exam. McGrath. Well, I think I have answered your request so far as I am concerned. I cannot grant it with the exception of tomorrow, Monday afternoon or Tuesday of next week.

Mr. Eisen. Well, may I just have the statement that I made tendered in the form of an offer of proof?

Exam. McGrath. I suppose I cannot stop you from doing that but I would not call that a legitimate offer of proof when you are not ready to submit it when the case is set for hearing.

Mr. Eisen. Well, I would be if you would set it in accordance with the request.

Exam. McGrath. Did you make any prior request on the Commission to set this case down at some other time than the day on which it was set?

Mr. Eisen. No, Mr. Examiner. The Commission's order, as well as the application, was for the continuance of interim operations. However, in my opinion the proof submitted on direct has wandered a bit from that strict interpretation of the Commission's order and the application and that is the reason why I am making this request, because the admission of the type of proof that went in today, frankly, took me by surprise.

337 Exam. McGrath. Well, your request is denied except upon the conditions which I have heretofore stated. Now, is there anything further? Is there any further testimony by any protestant?

(No response.)

Exam. McGrath. Is there any testimony or evidence by applicants in the nature of rebuttal?

Mr. Foster. No further testimony, Mr. Examiner.

Mr. Eldred. Mr. Examiner, might I inquire, is it the purpose to have a proposed report in this case?

Exam. McGrath. No, it is not the purpose to have a proposed report.

Mr. Foster. Well, the applicant was going to make a request for a proposed report.

Exam. McGrath. You do request that, do you?

Mr. FOSTER. I do request a proposed report.

Exam. MCGRATH. Is there any objection to that procedure?

Mr. ELDRED. None on my part.

Mr. EISEN. I have none.

Mr. FOSTER. And we wish to file a brief. I would like awfully well to have about 40 days, if I could, because there are a lot of admiralty cases coming up in the meantime.

Exam. MCGRATH. I would like very much to grant you that but my instructions are not to allow you more than 30 days.

338 I will fix the date for filing briefs as March 21st. The hearing in this proceeding is closed.

(At 6 p. m., February 13, 1942, hearing closed.)

339. *Exhibit No. 11*

Witness: McCarthy

MODIFICATIONS OF CHARTER DATED FEBRUARY 18, 1937, ON STEAMER "T. J. MCCARTHY," EX "MORRIS S. TREMAINE," DATED APRIL 7, 1939

340 APRIL 7, 1939.

In re: "Steamer Morris S. Tremaine" Charter February 18, 1937

DETROIT AND CLEVELAND NAVIGATION COMPANY,
210 Wayne Street, Detroit, Michigan.

GENTLEMEN: In your letter of January 27, 1939, exercising your option for a renewal of the Charter on the steamer "Morris S. Tremaine" for the season of 1939 in accordance with the terms and agreement of the Charter dated February 18, 1937, you stated that it was with the understanding that certain agreements discussed in your Mr. Perkins' office on January 15, 1939, would be added to the Charter Agreement covering operations during the 1939 season.

Under paragraph one of the Charter the obligation is on the Owner to have the "Tremaine" tight, staunch and strong, well and sufficiently tackled, appareled, furnished, outfitted and equipped, and in every respect in seaworthy and in good working condition and fit for the service for which she is chartered. It is further provided that the Owner will bear all expense in connection with the fit-out, including such expenses as may be necessary to procure the approval of the vessel by the United States Local Inspectors of Steam Vessels and their certificate for the vessel for the coming season.

Paragraph three of the Charter has the usual provision that the Charterer, upon accepting the vessel in the condition outlined in paragraph one, will, during the charter period, pay all costs of maintenance and operation including supplies of every nature, repairs and upkeep of the vessel, equipment, machinery, etc.

Paragraphs ten and twelve provide that the vessel will be redelivered to the Owner in the same condition as when delivered, reasonable wear and tear excepted, paragraph fourteen relieving the Charterer from redelivery of the vessel in event of a total and/or constructive total loss.

Certain questions have come up in the past as to what constituted "fit-out" and what constituted "wear and tear" within the meaning of the Charter. Accordingly, so as to clarify the charter in that particular, it is agreeable to us that the attached may be considered as paragraph eighteen of the Charter and that the Charter may be amended by the adding of the attached as paragraph eighteen.

We believe the above clearly expresses our understanding in the matter, and suggest that you execute the extra copy of this letter and return it for attachment to our copy of the Charter.

Very truly yours,

(Signed) T. J. McCarthy, *President.*

We accept the language as contained in proposed additional paragraph eighteen attached as an amendment to the Charter discussed in this letter.

Detroit & Cleveland Navigation Co.,

By (Signed) C. L. Perkins, *General Manager.*

341 "Paragraph eighteen (18), or amendment to Charter between Detroit & Cleveland Navigation Company, and Automotive Trades Steamship Company covering the vessel "Morris S. Tremaine," dated February 18, 1937.

It is agreed between the Owner and Charterer that consumable supplies, viz., hawsers, heaving lines and cables, which usually have life of a season or more, wearing out during the first ninety (90) days of the Charter are to be replaced at the expense of the Owner. This does not contemplate breakage or destruction of such consumable supplies due to unusual condition of service or negligence of the crew. Such consumable supplies wearing out after ninety (90) days from the commencement of the service of the vessel under the Charterer for each season are to be replaced at the expense of the Charterer, and said replacement shall remain aboard the vessel at termination of the charter period and become the property of the Owner. It is understood that the

Charter is being clarified only in this one particular, all other terms and conditions to remain unchanged.

Accepted:

AUTOMOTIVE TRADES STEAMSHIP COMPANY.
By (Signed) T. J. McCARTHY, *President.*

Accepted:

DETROIT AND CLEVELAND NAVIGATION CO.,
By (Signed) C. L. PERKINS, *General Manager.*

342 *Exhibit No. 12*

Witness: McCarthy

MODIFICATION OF CHARTER DATED FEBRUARY 18, 1937, OF STEAMER "GEORGE W. MEAD," DATED APRIL 7, 1939

343 APRIL 7, 1939.

In re: Steamer "George W. Mead" Charter February 18, 1937

DETROIT AND CLEVELAND NAVIGATION COMPANY,
210 Wayne Street, Detroit, Michigan.

GENTLEMEN: In your letter of January 27, 1939, exercising your option for a renewal of the Charter on the Steamer "George W. Mead" for the season of 1939 in accordance with the terms and agreement of the Charter dated February 18, 1937, you stated that it was with the understanding that certain agreements discussed in your Mr. Perkins' office on January 15, 1939, would be added to the Charter Agreement, covering operations during the 1939 season.

Under paragraph one of the Charter the obligation is on the Owner to have the "Mead" tight, staunch and strong, well and sufficiently tackled, appareled, furnished, outfitted, and equipped, and in every respect in seaworthy and in good working condition and fit for the service for which she is chartered. It is further provided that the Owner will bear all expense in connection with the fit-out, including such expenses as may be necessary to procure the approval of the vessel by the United States Local Inspectors of Steam Vessels and their certificate for the vessel for the coming season.

Paragraph three of the Charter has the usual provision that the Charterer, upon accepting the vessel in the condition outlined in paragraph one, will, during the charter period, pay all

costs of maintenance and operation including supplies of every nature, repairs and upkeep of the vessel, equipment, machinery, etc.

Paragraphs ten and twelve provide that the vessel will be redelivered to the Owner in the same condition as when delivered, reasonable wear and tear excepted, paragraph fourteen relieving the Charterer from redelivery of the vessel in event of a total and or constructive total loss.

Certain questions have come up in the past as to what constituted "fit-out" and what constituted "wear and tear" within the meaning of the Charter. Accordingly, so as to clarify the Charter in that particular, it is agreeable to us that the attached may be considered as paragraph eighteen of the Charter and that the Charter may be amended by the adding of the attached as paragraph eighteen.

We believe the above clearly expresses our understanding in the matter and suggest that you execute the extra copy of this letter and return it for attachment to our copy of the Charter.

Very truly yours,

(Signed) T. J. McCarthy, *President.*

TNM.

We accept the language as contained in proposed paragraph eighteen attached as an amendment to the Charter discussed in this letter.

Detroit and Cleveland Navigation Co.,
By C. L. Perkins.

344 "Paragraph eighteen (18), or amendment to Charter between Detroit & Cleveland Navigation Company, and T. J. McCarthy Steamship Company covering the vessel 'George W. Mead,' dated February 18, 1937.

It is agreed between the Owner and Charterer that consumable supplies, viz., hawsers, heaving lines and cables, which usually have life of a season or more, wearing out during the first ninety (90) days of the Charter are to be replaced at the expense of the Owner. This does not contemplate breakage or destruction of such consumable supplies due to unusual condition of service or negligence of the crew. Such consumable supplies wearing out after ninety (90) days from the commencement of the service of the vessel under the Charterer for each season are to be replaced at the expense of the Charterer and said replacement shall remain aboard the vessel at termination of the charter period and become the property of the Owner. It is understood that the

Charter is being clarified only in this one particular, all other terms and conditions to remain unchanged."

Accepted:

T. J. McCarthy Steamship Company,
By (Signed) T. J. McCarthy, *President.*

Accepted:

Detroit and Cleveland Navigation Co.,
By (Signed) C. E. Perkins, *General Manager.*

345 *Exhibit No. 13*

Witness: McCarthy

Agreement Between Detroit and Cleveland Navigation Company and T. J. McCarthy, Dated March 29, 1933

346 Detroit and Cleveland Navigation Company

Detroit, Michigan, *March 29th, 1933.*

Mr. T. J. McCarthy,
17400 Northlawn Avenue, Detroit, Michigan.

Dear Sir: Enclosed herewith please find two copies of Agreement with Exhibit "A" attached hereto. Will you kindly sign and have witnessed returning both copies to us at which time we will also sign and have witnessed and return you one copy for your record.

As there was insufficient time for us to definitely determine whether proper working arrangements could be arrived at for the operation of an auto freight carrying vessel in case of continual overloads for our own steamers, we left that phase of the situation out of this Agreement. It is understood, however, that should this time arrive and we can mutually agree upon satisfactory conditions then the agreement can be amended to embody this phase of the situation.

Yours very truly,

Detroit & Cleveland Navigation Company,
(Signed) George B. Wright, *Freight Traffic Manager.*

GBW/M:
Encl.

347 AGREEMENT

This agreement, made and executed this 29th day of March, A. D. 1933, by and between Detroit & Cleveland Navigation Company, a corporation organized and existing under the laws of the

State of Michigan, with principal offices in the City of Detroit, Michigan, hereinafter called the Navigation Company, party of the first part, and T. J. McCarthy, of 17400 Northlawn Avenue, Detroit, Michigan, party of the second part, witnesseth:

That the parties hereto, for and in consideration of the mutual promises hereinafter set forth, do agree to and with each other as follows:

1. Party of the second part agrees that, during the life of this agreement, he will devote his time and best efforts to soliciting shippers and consignees of new and secondhand automobiles (other than tourist automobiles) to ship such automobiles via the steamers of the Navigation Company.

2. The Navigation Company agrees that, in lieu of all other salary or compensation and as full compensation for the services to be performed by the said party of the second part, it will pay to the said party of the second part a commission on each new or secondhand automobile (other than the automobiles described in paragraph three hereof) which he shall, during the life of this agreement, procure to be shipped via the steamers of the Navigation Company, which commission shall be equal to ____ per cent of the freight rate charged by the Navigation Company for the transportation of such automobile, such commission, however, to be in no case less than _____ per automobile. Such commission shall be payable on the sixteenth and first days of each and every month while this agreement remains in effect.

3. It is understood and agreed between the parties hereto that Exhibit "A" hereto attached contains a list of automobile dealers, each of whom did, during the navigation season of 1932, regularly use the steamers of the Navigation Company for transportation of automobiles consigned to them, and it is further understood and agreed between the parties hereto that no commission shall be payable to the said party of the second part on any automobile which may hereafter be consigned to any of the persons listed on said Exhibit "A," whether such shipment be procured by the solicitation of the said party of the second part or otherwise, or on new or secondhand automobiles that the Navigation Company procured by its solicitation without the aid of the party of the second part. It is further understood and agreed that no commission shall be payable on account of the shipment of any tourist automobiles.

348

4. It is mutually understood and agreed that the said party of the second part may engage other solicitors to assist him, but, if he does so, it shall be entirely at his own expense. The Navigation Company shall be under no liability for any expenditure, expenses or liabilities of any nature whatsoever made, incurred or contracted

by the said "McCarthy," the said "McCarthy" to bear and pay all such expenses, expenditures and liabilities himself.

5. It is distinctly understood and agreed that neither the said party of the second part, nor any solicitors or agents whom he may employ, shall pay any part of the commission of party of the second part to any shipper or consignee as an inducement to ship automobiles via the steamers of the Navigation Company, and the said party of the second part does specifically agree, for himself and his solicitors and agents, that neither he nor they will do any act or engage in any practice in connection with the solicitation of shipments which is in any way contrary to law or to the rules and regulations of any governmental board or authority
349 having jurisdiction in the premises. It is further specifically understood and agreed that in violation of the agreements in this paragraph contained shall give the Navigation Company the right forthwith to terminate this agreement.

It is mutually understood and agreed that, unless sooner terminated as hereinabove provided, this agreement shall continue in full force and effect during the Navigation Company's 1933, 1934 and 1935 navigation season and shall terminate at the close of said season.

In witness whereof, the party of the first part has caused this instrument to be executed by an officer thereunto duly authorized, and the party of the second part has set his hand and seal the day and year first above written.

DETROIT & CLEVELAND NAVIGATION COMPANY,
By (Signed) GEORGE B. WRIGHT,
Its Freight Traffic Manager.

In the presence of:

(Signed) T. J. McCARTHY.
(Signed) R. W. McKAY.
(Signed) C. A. MILLER.

350 EXHIBIT NO. IX

Witness: McCARTHY

AGREEMENT BETWEEN DETROIT AND CLEVELAND NAVIGATION COMPANY AND T. J. McCARTHY RE: OPERATION OF STEAMERS "DAVIS" AND "UTICA," DATED AUGUST 3, 1933, ALSO RIDER DATED AUGUST 24, 1933

351 DETROIT, MICHIGAN, *August 3d, 1933.*

Confirming verbal agreement between George B. Wright, Freight Traffic Manager, Detroit and Cleveland Navigation Company, and T. J. McCarthy, regarding the charter of the Great

Lakes Transit Corporation Steamers "J. M. Davis" and "Utica," both George B. Wright and T. J. McCarthy are familiar with the charter agreement between the Detroit and Cleveland Navigation Company and the Great Lakes Transit Corporation.

The purpose of this agreement is to go on record as to the division between the Detroit and Cleveland Navigation Company and T. J. McCarthy of profit or loss in connection with the operation of the chartered steamers. The Detroit and Cleveland Navigation Company is to guarantee to the Great Lakes Transit Corporation the sum of _____ Dollars for the thirty day charter period which is based on approximately _____ Dollars per day. All expenses for the operating of the Steamers "J. M. Davis" and "Utica" are to be paid by the Detroit and Cleveland Navigation Company—such as Cargo Insurance, cargo handling on and off the steamers, tug bills incurred when necessary, also the cost of rental of warehouse located at 39–41 Indiana Street, Buffalo, N. Y., including cost of repairs to elevator, and any other expense due to the operation of these steamers.

The Detroit and Cleveland Navigation Company is to collect all freight charges on automobiles and other freight loaded on the Steamers "J. M. Davis" and "Utica." The profit on the operation of the steamers and the warehouse located at 39–41 Indiana Street, Buffalo, after expenses above enumerated are paid, is to be divided ____ percent to the Detroit and Cleveland Navi-
352 gation Company and ____ percent to the said T. J. McCarthy. If loss is incurred in the operation of the steamers, it is to be borne at the same percentage, ____ percent by the Detroit and Cleveland Navigation Company, ____ percent by the said T. J. McCarthy. The maximum amount of loss to be borne by the said T. J. McCarthy is _____ Dollars for the charter period.

DETROIT AND CLEVELAND NAVIGATION CO.,
By (Signed) GEORGE B. WRIGHT,
Freight Traffic Manager.
(Signed) T. J. MCCARTHY.

RIDER TO AGREEMENT OF AUGUST 3, 1933

DETROIT, MICHIGAN, *August 24, 1933.*

The following addition to agreement of August 3rd between George B. Wright, Freight Traffic Manager, Detroit and Cleveland Navigation Company, and T. J. McCarthy covering charter of Great Lakes Transit Corporation Steamers "J. M. Davis" and "Utica" is a rider to such August 3rd contract and is to govern all transactions under this agreement as tho it were originally incorporated in such agreement.

It is hereby understood Mr. T. J. McCarthy will receive no remuneration for charter automobile shipments other than that outlined in agreement of August 3rd.

(Signed) GEORGE B. WRIGHT.
(Signed) T. J. MCCARTHY.

353 *Exhibit No. 15*

Witness: McCarthy

AGREEMENT BETWEEN DETROIT AND CLEVELAND NAVIGATION COMPANY AND T. J. MCCARTHY, DATED APRIL 17, 1934

354 AGREEMENT

This agreement, made and executed this 17th day of April A. D. 1934, by and between Detroit & Cleveland Navigation Company, a corporation organized and existing under the laws of the State of Michigan, with principal offices in the City of Detroit, Michigan, hereinafter called the Navigation Company, party of the first part, and T. J. McCarthy, of 17400 Northlawn Avenue, Detroit, Michigan, party of the second part, witnesseth:

That the parties hereto, for and in consideration of the mutual promises hereinafter set forth, do agree to and with each other as follows:

1. Party of the second part agrees that, during the life of this agreement, he will devote his whole time and best efforts to soliciting shippers and consignees of new and secondhand automobiles (other than tourist automobiles) to ship such automobiles via the steamers owned or chartered by the Navigation Company.

2. The Navigation Company agrees that, in lieu of all other salary or compensation and as full compensation for the services to be performed by the said party of the second part, it will pay to the said party of the second part a commission on each new or secondhand automobile (other than tourist automobiles) which shall, during the life of this agreement, be shipped via the steamers owned or chartered by the Navigation Company (expressly excluding, however, any such automobiles which may be shipped on steamers of the Navigation Company operated on the Chicago Division), which commission shall be equal to ____ percent of the freight rate charged by the Navigation Company for the transportation of such automobiles, provided that, if and when in any navigation season while this contract remains in effect, the total of the freight rates charged by the Navigation Company on all such automobiles transported by the Navigation Company (ex-

cluding the said Chicago Division), during such season
355 shall equal ..... then, and in that event, the commission of party of the second part shall, during the remainder of such season, be increased to ..... percent. Such commission shall be payable on the 16th and first days of the month.

3. It is mutually understood and agreed that the party of the second part shall at his own cost and expense engage other solicitors to assist him so that the territory normally productive of automobile tonnage will be thoroughly covered by solicitors. It is further understood and agreed that the Navigation Company shall be under no liability for any expenditures, expenses or liabilities of any nature whatsoever made, incurred or contracted by the party of the second part, the said party of the second part to bear and pay all such expenses, expenditures and liabilities himself.

4. It is distinctly understood and agreed that neither the said party of the second part, nor any solicitors or agents whom he may employ, shall pay any part of the commission of party of the second part to any shipper or consignee as an inducement to ship automobiles via the steamers of the Navigation Company, and the said party of the second part does specifically agree, for himself and his solicitors and agents, that neither he nor they will do any act or engage in any practice in connection with the solicitation of shipments which is in any way contrary to law or to the rules and regulations of any governmental board or authority having jurisdiction in the premises. It is further specifically understood and agreed that a violation of the agreements in this paragraph contained shall give the Navigation Company the right forthwith to terminate this agreement.

5. It is mutually understood and agreed that this contract contemplates personal performance by party of the second part and that, if at any time party of the second part shall for any reason whatsoever be unable to or shall refuse or neglect to
356 perform personally the obligations herein imposed upon him, the Navigation Company shall forthwith have the right to terminate this agreement.

6. It is mutually understood and agreed that unless sooner terminated as hereinabove provided, this agreement shall continue in full force and effect during the Navigation Company's 1934, 1935, 1936 and 1937 navigation seasons and shall terminate at the close of the 1937 season.

In witness whereof, the party of the first part has caused this instrument to be executed by an officer thereunto duly authorized,

and the party of the second part has set his hand and seal the day and year first above written.

DETROIT & CLEVELAND NAVIGATION COMPANY,
By (Signed) GEORGE B. WRIGHT,
Its Freight Traffic Manager.
By (Signed) T. J. McCARTHY.

In the presence of:
(Signed) R. W. McKAY.
(Signed) L. W. PATTERSON.

357 *Exhibit No. 16*

Witness: McCarthy

AGREEMENT BETWEEN DETROIT AND CLEVELAND NAVIGATION COMPANY AND T. J. McCARTHY, CANCELLING AGREEMENT OF APRIL 17TH, 1934, DATED FEBRUARY 18, 1937

358 AGREEMENT

This agreement made and entered into this 18th day of February A. D. 1937 by and between Detroit and Cleveland Navigation Company, a corporation organized and existing under the laws of the State of Michigan, with its principal office in the City of Detroit, Michigan, (hereinafter called the Navigation Company), party of the first part, and T. J. McCarthy, of 17400 Northlawn Avenue, Detroit, Michigan, party of the second part, witnesseth:

Whereas, at the request of Second Party, the Navigation Company has this day executed a certain agreement with the T. J. McCarthy Steamship Company, a Michigan corporation of Detroit, Michigan (which said company is controlled by said Second Party) covering the solicitation of Automobile Shipments for the seasons of navigation 1937 to 1942 inclusive, and which agreement is intended to supersede the certain agreement between the parties hereto dated April 17th, 1934, which by terms does not expire until the close of the 1937 season of navigation;

Now, therefore, in consideration of the execution of the first above-mentioned agreement and other valuable considerations, it is agreed:

1. The certain agreement dated April 17, 1934, between Detroit and Cleveland Navigation Company, a Michigan corporation of Detroit, Michigan, party of the first part, and T. J. McCarthy of 17400 Northlawn Avenue, Detroit, Michigan, party of the second part, is hereby cancelled and terminated as of the date hereof.

2. Second Party hereto undertakes and agrees that he will cause said T. J. McCarthy Steamship Company to perform and carry out said contract and that during the period thereof he will devote his whole time and best efforts in the performance thereof by said T. J. McCarthy Steamship Company.

359 In witness whereof, the party of the first part has caused this instrument to be executed by an officer thereunto duly authorized, and the party of the second part has set his hand and seal, the day and year first above written.

DETROIT AND CLEVELAND NAVIGATION COMPANY,
By (Signed) JAS R. COULTER, *Its Vice President.*
(Signed) T. J. McCARTHY (L. S.).

In the presence of:
(Signed) L. W. PATTERSON.

360 *Exhibit No. 11*

Witness McCarthy

AGREEMENT BETWEEN DETROIT AND CLEVELAND NAVIGATION COMPANY AND AUTOMOTIVE TRADES STEAMSHIP COMPANY, DATED NOVEMBER 24, 1936, COVERING OPERATION OF STR. "MORRIS S. TREMAINE" DURING 1936

361 NOVEMBER 24, 1936.

MR. GEORGE B. WRIGHT,
Freight Traffic Manager, D & C Navigation Company,
210 Wayne Street, Detroit, Michigan.

DEAR SIR: Confirming arrangements made last Friday for the handling of automobiles by the D. & C. Navigation Company:

The Automotive Trades Steamship Company is offering for the use of the D. & C. Navigation Company the Steamer "Morris S. Tremaine, for a period up to November 30, 1936, for automobile cargoes on the basis agreed upon _____ of the freight revenue to accrue and to be paid to the Automotive Trades Steamship Company, _____ of the freight revenue to be retained by the D. & C. Navigation Company.

The Automotive Trades Steamship Company will pay all crew hire and vessel operation (not including any handling charges), and Hull and P. & I. insurance. The D. & C. Navigation will carry all cargo insurance on any automobiles carried by the "Tremaine," and the D. & C. Navigation Company agrees to release the Steamer "Tremaine" as to any liability for cargo insurance on any automobiles carried on the Steamer "Tremaine."

In the event the D. & C. Navigation Company cannot supply full cargoes then the Automotive Trades Steamship Company will be permitted to secure other cargo as agreed from the Minnesota-Atlantic Transit Company.

It is also agreed that the usual commissions payable to T. J. McCarthy for the solicitation of automobile business will be paid to T. J. McCarthy on any such D. & C. cargo carried by the Steamer "Morris S. Tremaine."

Very truly yours,

AUTOMOTIVE TRADES STEAMSHIP COMPANY,
(Signed). T. J. McCARTHY, *Its President.*

Accepted:

DETROIT AND CLEVELAND NAVIGATION CO.,
By (Signed) GEORGE B. WRIGHT,
Its Freight Traffic Manager.

362 *Exhibit No. 18*

Witness: McCarthy

AGREEMENT BETWEEN DETROIT AND CLEVELAND NAVIGATION COMPANY AND T. J. McCARTHY STEAMSHIP COMPANY, DATED FEBRUARY 18, 1937

363 AGREEMENT

This agreement made and entered into this 18th day of February A. D. 1937 by and between Detroit and Cleveland Navigation Company, a corporation organized and existing under the laws of the State of Michigan, with its principal office in the City of Detroit, Michigan (hereinafter called the Navigation Company), party of the first part, and T. J. McCarthy Steamship Company, a Michigan corporation of Detroit, Michigan (hereinafter called Agent), party of the second part, witnesseth:

That the parties hereto, for and in consideration of the mutual promises hereinafter set forth do agree to and with each other as follows:

1. The Agent agrees that it will devote its best efforts to soliciting shippers and consignees of new and secondhand automobiles and trucks (other than tourist automobiles) to ship such automobiles and trucks via the steamers owned or chartered by the Navigation Company; that during the life of this agreement it covenants and agrees to maintain in its employ and require him to devote his whole time and best efforts to soliciting shippers and consignees as aforesaid, T. J. McCarthy, of 17400 Northlawn Avenue, Detroit, Michigan.

2. The Navigation Company agrees in lieu of all payments, compensation or charges and as full compensation for the services performed by the said Agent, its personnel, employees, and representatives, the Navigation Company will pay to said Agent a commission on each new or secondhand automobile and truck (other than tourist automobiles) which, shall, during the life of this agreement, be shipped via the steamers owned or chartered by the Navigation Company (expressly excluding, however, any such automobiles as may be shipped on steamers of the Navigation Company operated on the Chicago Division) and for which the lake freight on such shipments is actually received by the Navigation Company, a commission equal to ____ percent _____ of the amount of lake freight charged and collected by the
364 Navigation Company for the transportation of such automobiles, provided that if and when in any navigation season while this contract remains in effect the total lake freight rates charged and collected by the Navigation Company on all such automobiles transported by the Navigation Company (excluding the Chicago Division) during such season shall equal _____ _____ then and in that event the commission of the Agent on lake freight collected on account of such shipments made during the remainder of such season shall be increased to ____ percent _____. Such commission shall be payable on the sixteenth and first days of each month on the amount of lake freight collected during the preceding [illegible] days on account of such shipments.

3. It is mutually understood and agreed that the Agent shall at its own cost and expense engage and employ the said T. J. McCarthy on the basis of his devoting his whole time and best efforts to soliciting shippers and consignees as aforesaid, and shall likewise engage other solicitors to assist said McCarthy so that the territory normally productive of automobile tonnage will be thoroughly covered by solicitors. It is further understood and agreed that the Navigation Company shall be under no liability for any expenditures, expenses or liabilities of any kind or nature whatsoever made, incurred or contracted by the Agent or its employees or representatives, the said Agent bearing and paying all such expenses, expenditures and liabilities itself.

4. It is distinctly understood and agreed that neither the said Agent nor any of its officers, employees, solicitors or agents whom it may employ shall pay any part of the commission of the Agent to any shipper or consignee as an inducement to ship automobiles via the steamers of the Navigation Company, and the said Agent does specifically agree, for itself and its employees, repre-
365 sentatives, solicitors, and agents, that neither it nor they will do any act or engage in any practice in connection with the

solicitation of shipments which is in anyway contrary to law or to the rules and regulations of any governmental board or authority having jurisdiction in the premises. It is further specifically understood and agreed that a violation of the agreements in this paragraph contained shall give the Navigation Company the right forthwith to terminate this agreement.

5. It is mutually understood and agreed that this contract contemplates, and the same is of the essence thereof, that the said Agent will have and continue in its employ, and at all times devoting his whole time and best efforts in the performance of this contract, the said T. J. McCarthy, and that in the event of the death, incapacity or failure to act of said T. J. McCarthy, or if at any time said T. J. McCarthy does not continue in the employ of said Agent or shall be unable to or shall refuse or neglect to perform personally the services herein contracted by said Agent to be personally performed by said T. J. McCarthy, the Navigation Company shall forthwith have the right to terminate this agreement.

6. It is mutually understood and agreed that this agreement shall continue in full force and effect during the Navigation Company's 1937, 1938, 1939, 1940, 1941, and 1942 navigation seasons, and shall terminate at the close of the 1942 season.

In witness whereof the parties hereto have caused this instrument to be executed by their respective officers thereunto duly authorized, and their corporate seals to be hereto affixed.

DETROIT AND CLEVELAND NAVIGATION COMPANY.

By (Signed) JAS. R. COULTER, *Its Vice President.*

T. J. McCARTHY STEAMSHIP COMPANY.

By (Signed) T. J. McCARTHY, *Its President.*

Signed, sealed and delivered in presence of:

(Signed) L. W. PATTERSON.

366 *Exhibit No. 19*

Witness: McCarthy

CONTRACT BETWEEN T. J. McCARTHY STEAMSHIP COMPANY AND T. J. McCARTHY, INDIVIDUAL, DATED APRIL 7, 1937

367 Contract Between T. J. McCarthy Steamship Company and T. J. McCarthy, Individual

T. J. McCarthy, Individual, has had for the past four years, a personal contract with the Detroit and Cleveland Navigation Company, for the solicitation of automobiles, trucks, etc., for which definite and specified commissions were paid to him by the Detroit and Cleveland Navigation Company.

It was deemed advisable this year, and a new contract was entered into for six (6) years, between Detroit and Cleveland Navigation Company and the T. J. McCarthy Steamship Company for the solicitation of such accounts, payment of commissions, etc., to be made to the T. J. McCarthy Steamship Company. The reason for this change in the contract was at the suggestion of T. J. McCarthy, Individual, who preferred to have the contract, as far as his part of it was concerned, with the T. J. McCarthy Steamship Company. The T. J. McCarthy Steamship Company now agrees to turn over to T. J. McCarthy, Individual, the same consideration in the way of commissions and all remunerations from the commission contract of the T. J. McCarthy Steamship Company with the Detroit and Cleveland Navigation Company. The sense of this agreement is that whereas last year, T. J. McCarthy had a contract, personally, with the Detroit and Cleveland Navigation Company, this year it is made out to the T. J. McCarthy Steamship Company for what is considered good and valuable reasons, at the request of T. J. McCarthy. The T. J. McCarthy Steamship Company now and hereby agrees to pay to T. J. McCarthy, Individual, all commissions on the Detroit and Cleveland Navigation Company commission contract. This in no way affects the charter of the Steamer "George W. Mead" which is payable to the T. J. McCarthy Steamship Company."

T. J. McCARTHY STEAMSHIP COMPANY,
By (Signed) T. J. McCARTHY, *Its President.*
T. J. McCARTHY, INDIVIDUAL.
(Signed) T. J. McCARTHY.

DETROIT, MICHIGAN, *April 7, 1937.*

368 *Exhibit No. 20*

Witness: McCarthy

AGREEMENT BETWEEN DETROIT AND CLEVELAND NAVIGATION COMPANY AND AUTOMOTIVE TRADES STEAMSHIP COMPANY, RE: CHARTER OF STEAMER "GEORGE H. INGALLS," SEASON OF 1941

369 DETROIT, MICHIGAN, *March 8, 1941.*

Re: Charter of Steamer "George H. Ingalls"

Mr. BERNARD M. GORDON,
Assistant to the President,
Detroit and Cleveland Navigation Company,
Detroit, Michigan.

DEAR SIR: This will confirm conference in our office on March 6, 1941. The basis and terms of our discussion for chartering the

Steamer "George H. Ingalls" was an amount of ————, for the season of navigation of 1941, payments to be made in advance, in eight equal monthly payments, starting with the opening of navigation, or not later than April 15, 1941.

It is mutually understood and agreed that the Steamer "George H. Ingalls" will take her regular turn at the docks for loading and unloading. It is further agreed that the charter hire for the season of navigation of 1941, ———— Dollars is based upon the transportation by that vessel, during 1941, of thirty thousand (30,000) automobiles, and that you will pay, as additional charter hire, eighty three and one-third (83⅓) cents per automobile for each automobile transported in excess of thirty thousand. It is further agreed that this company will refund to you out of the charter hire of ———— Dollars, the like sum of eighty three and one-third (83⅓) cents for each automobile under thirty thousand (30,000) transported during 1941 on the Steamer George H. Ingalls, to the extent of a deficiency of six thousand (6,000) cars. Or, in other words, the minimum net charter hire for 1941 shall in no event be less than ———— Dollars. Settlement for the excess automobiles transported, or deficiency not transported, is to be made not later than December 31, 1941. All conditions
of the charter by you of the Steamer "George H. Ingalls"
270 for the season of navigation of 1941 shall be the same as the terms and conditions of agreement and charter for that vessel for the season of 1940, dated the 20th day of March, 1940, with the exception of the charter hire to be paid.

Your acceptance of this letter at the place noted below will constitute the agreement as between the companies for the season of 1941.

Very truly yours,

AUTOMOTIVE TRADES STEAMSHIP COMPANY,
By (Signed) T. J. McCARTHY, *President.*

Accepted:

DETROIT AND CLEVELAND NAVIGATION COMPANY,
By (Signed) JAMES T. MACMILLAN, *President.*

371 COPY OF INVOICE RECEIVED FROM DETROIT AND CLEVELAND NAVIGATION COMPANY FEBRUARY 5, 1942

DETROIT AND CLEVELAND NAVIGATION COMPANY:
Detroit, Michigan, December 31, 1941.

AUTOMOTIVE TRADES STEAMSHIP COMPANY,
Detroit, Michigan.

(Attention: T. J. McCarthy, President.)

Description	*Amount*
Adjustment of charter fee for Steamer "George H. Ingalls" for the season of 1941. Based on 761 automobiles at $0.83½ each in accordance with the terms of the contract dated March 8, 1931	634.17
Number of automobiles to be transported as specified in contract	30,000
Actual number of automobiles transported	29,239
Difference	761

372 *Exhibit No. 21*

Witness: McCarthy

AGREEMENT DATED FEBRUARY 4, 1942, BETWEEN DETROIT AND CLEVELAND NAVIGATION COMPANY AND AUTOMOTIVE TRADES STEAMSHIP COMPANY

Re: Cancelling Agreement dated February 18, 1937 covering Charter of Steamer "T. J. McCarthy" Ex "Morris S. Tremaine"

373 FEBRUARY 4 1942.

JAMES THAYER MCMILLAN, *President*,
Detroit and Cleveland Navigation Company,
210 Wayne Street, Detroit, Michigan.

DEAR SIR: As per our conversation of yesterday, we have acceeded to your suggestion, and are enclosing herewith the agreement which you have prepared, being the cancellation of the charter on the Steamer "T. J. McCarthy," ex "Morris S. Tremaine."

We are handing you herewith two copies properly executed with our signatures. We would ask that you execute and return one copy to us, via the bearer.

Very truly yours,

AUTOMOTIVE TRADES STEAMSHIP COMPANY,
(Signed) T. J. MCCARTHY, *President*.

B.

374 AGREEMENT

This agreement made and entered into this 4th day of February, A. D. 1942 by and between Automotive Trades Steamship Company, a corporation organized under the laws of the State of Delaware, with its principal office in the City of Detroit, State of Michigan (hereinafter called the Owner), sole owner of the Steamer "T. J. McCarthy," nee "Morris S. Tremaine," and Detroit and Cleveland Navigation Company, a corporation organized and existing under the laws of the State of Michigan, with its principal office in the City of Detroit, State of Michigan (hereinafter called Navigation Company) witnesseth:

Whereas, under date of February 18, 1937, a certain agreement of charter was entered into by and between the Owner and the Navigation Company, covering the Steamer "Morris S. Tremaine," now known as the "T. J. McCarthy," wherein the Owner did charter and let into the Navigation Company (referred to in said charter as the Charterer) the said Steamer "Morris S. Tremaine" for the Lake season of navigation of 1937 in accordance with the terms and provisions set forth in said charter; and

Whereas, it was provided in said charter that the Navigation Company should have the right and option to renew and extend said charter on the same terms and conditions as in said charter contained, from season to season for the seasons of navigation of 1938, 1939, 1940, 1941, and 1942, which said option was exercised by the Navigation Company for each of the said seasons of 1938, 1939, 1940, 1941, and was exercised by the Navigation Company for the season of 1942 by letter of the Navigation Company dated December 23, 1941 to the Owner; and

Whereas, it is the mutual desire of said Automotive Trades Steamship Company and of said Detroit and Cleveland
375 Navigation Company to cancel the said charter covering the Steamer "T. J. McCarthy," nee "Morris S. Tremaine," as of the close of the 1941 navigation season and to release each other from any and all expenses and liabilities thereunder of and from the close of the navigation season of 1941;

Now, therefore, in consideration of the premises and of the sum of One Dollar ($1.00), and other valuable considerations paid by the parties hereto each to the other, the receipt whereof is hereby confessed and acknowledged and wherewith each of the parties hereto is fully satisfied, it is mutually agreed that the option heretofore exercised by Detroit and Cleveland Navigation Company under said charter covering the navigation season of 1942 be and the same hereby is withdrawn and cancelled and held for nought and that the said charter of the Steamer "T. J. McCarthy," nee "Morris S. Tremaine," be and the same is hereby cancelled and

held for nought as of the conclusion of the navigation season of 1941, and that the parties to said charter be and same hereby are released each to the other of and from any and all obligations and liabilities under said option heretofore exercised by the Navigation Company and under said charter of and from the conclusion of the navigation season of 1941.

In witness whereof the parties hereto have caused this agreement to be executed by their respective officers thereunto duly authorized and their corporate seals to be hereto affixed this 4th day of February A. D. 1942.

DETROIT AND CLEVELAND NAVIGATION COMPANY,
(Signed) JAMES T. McMILLAN, *By its President.*

AUTOMOTIVE TRADES STEAMSHIP COMPANY,
(Signed) T. J. McCARTHY, *By its President.*

Signed, Sealed, and Delivered in the Presence of

MABEL P. NAVARRE.
M. ANGELENE BENSON.

376 ~~*Exhibit 22*~~

Witness McCarthy

AGREEMENT DATED FEBRUARY 4, 1942 BETWEEN DETROIT AND CLEVELAND NAVIGATION COMPANY AND T. J. McCARTHY STEAMSHIP COMPANY

Re: Cancelling solicitation agreement and Charter of Steamer "George W. Mead" dated February 18, 1937

377 FEBRUARY 4, 1942.

JAMES THAYER McMILLAN, *President,*
Detroit and Cleveland Navigation Company,
210 Wayne Street, Detroit, Michigan.

DEAR SIR: As per our conversation of yesterday, we have acceded to your suggestion, and are enclosing herewith the agreements which you have prepared, being the cancellation of contract with the T. J. McCarthy Steamship Company for the solicitation of automobiles; also cancellation of the charter on the Steamer "George W. Mead."

We are handing you herewith, two copies properly executed with our signatures. We would ask that you execute and return one copy to us, via the bearer.

Very truly yours,

T. J. McCARTHY STEAMSHIP COMPANY,
(Signed) T. J. McCARTHY, *President.*

378 AGREEMENT

This agreement made and entered into this ____ day of February A. D. 1942, by and between T. J. McCarthy Steamship Company, a corporation organized and existing under the laws of the State of Michigan, with its principal office in the City of Detroit, State of Michigan (hereinafter called the Owner), sole owner of the Steamer "George W. Mead" and Detroit and Cleveland Navigation Company, a corporation organized and existing under the laws of the State of Michigan, with its principal office in the City of Detroit, State of Michigan (hereinafter called the Navigation Company); witnesseth:

Whereas, under date of February 18, 1937, certain agreement of charter was entered into by and between the Owner and the Navigation Company covering the Steamer "George W. Mead" wherein the Owner did charter and let unto the Navigation Company (referred to in said charter as the Charterer) the said Steamer "George W. Mead" for the Lake season of navigation of 1937 in accordance with the terms and provisions set forth in said charter; and

Whereas, it was provided in said charter that the Navigation Company should have the right and option to renew and extend said charter on the same terms and conditions as in said charter contained, from season to season for the seasons of navigation of 1938, 1939, 1940, 1941, and 1942, which said option was exercised by the Navigation Company for each of said seasons of 1938, 1939, 1940, 1941, and was exercised by the Navigation Company for the season of 1942 by letter of the Navigation Company dated December 23, 1941 to the Owner; and

Whereas, under said date of February 18, 1937 a certain agreement was entered into by and between Detroit and Cleveland Navi-

gation Company (referred to therein as the Navigation

379 Company) and T. J. McCarthy Steamship Company (referred to therein as Agent) under the terms of which said agreement the Agent agreed to devote its best efforts to soliciting shippers and consignees of new and second-hand automobiles and trucks (other than tourist automobiles), to ship such automobiles and trucks via the steamers owned or chartered by the Navigation Company, and to maintain in its employ and require T. J. McCarthy to devote his whole time and best efforts to such solicitation, all in accordance with the terms and conditions of said agreement, during the navigation seasons of 1937, 1938, 1939, 1940, 1941, and 1942 and to terminate with the close of 1942 season; and

Whereas, it is the mutual desire of said T. J. McCarthy Steamship Company and of said Detroit and Cleveland Navigation

Company to cancel the said charter covering the Steamer "George W. Mead" as of the close of the 1941 navigation season and to cancel the said solicitation agreement of February 18, 1937 as of the close of the navigation season of 1941, and to release each other from any and all obligations and liabilities thereunder of and from the close of the navigation season of 1941;

Now, therefore, in consideration of the premises and of the sum of One Dollar ($1.00) and other valuable considerations paid by the parties hereto each to the other, the receipt whereof is hereby confessed and acknowledged and wherewith each of the parties hereto is fully satisfied, it is mutually agreed that the option heretofore exercised by Detroit and Cleveland Navigation Company under said charter covering the navigation season of 1942 be and the same hereby is withdrawn and cancelled and held for nought, and that the said charter of the Steamer "George W. Mead" be and the same hereby is cancelled and held for nought as of the conclusion of the navigation season of 1941, and that the said solicitation agreement of February 18, 1937, be and the same hereby is cancelled and held for nought as of the end of the navigation season of 1941, and that the parties to said charter and to said solicitation agreement be and the same hereby are re-
389 leased each to the other of and from any and all obligations and liabilities under said option heretofore exercised by the Navigation Company and under said charter and under said solicitation agreement of and from the conclusion of the navigation season of 1941.

In witness whereof the parties hereto have caused this agreement to be executed by their respective officers thereunto duly authorized and their corporate seals to be hereto affixed this _____ day of February A. D. 1942.

DETROIT AND CLEVELAND NAVIGATION COMPANY.
(Signed) JAMES T. MCMILLAN, *By its President.*

T. J. MCCARTHY STEAMSHIP COMPANY.
(Signed) T. J. MCCARTHY, *By its President.*

Signed, Sealed and Delivered in the Presence of:
(Signed) MABEL P. NAVARRE.
(Signed) M. ANGELENE BENSON.

380-A *Exhibit No. 23*

Witness: McCarthy

CONFIRMING DISCUSSIONS WITH MR. C. L. PERKINS, GENERAL MANAGER OF DETROIT & CLEVELAND NAVIGATION CO.

Re: Loan from the Detroit and Cleveland Navigation Company giving back preferred marine mortgage for sufficient funds to convert the Bulk Freighter "George H. Ingalls" into an Automobile Carrier

Oct. 10, 1937.

381 In line with the writer's recent conversations with Mr. C. L. Perkins, and his conversation of Saturday, October 9, 1937, with Mr. J. T. McMillan, in order to bring the subject matter to a definite proposal in writing for further discussion: It is proposed that the Automotive Trades Steamship Company offer to the Detroit & Cleveland Navigation Company a proposal of a loan from the Detroit & Cleveland Navigation Company, not to exceed seventy thousand ($70,000.00) dollars, thirty-five thousand five hundred ($35,500.00) dollars of which amount represents the balance of the mortgage given to the Eastern Grain Elevator Corporation by the Automotive Trades Steamship Company on the "George H. Ingalls," and the balance, thirty-four thousand five hundred ($34,500.00) dollars representing the estimated cost of the conversion of the Steamer "George H. Ingalls" into an automobile carrier.

While our discussions on the Steamer "George H. Ingalls" have been on the basis of a balance of $33,500.00 (the balance due on the mortgage as to the end of the season) the exact amount, after our payment of October 15, 1937, would be $35,500.00, and we should have some date basis for completing our negotiations on the above figures, which, of course, can be substantiated and put into our later agreement.

It is intended that the Automotive Trades Steamship Company will use the $35,500 of the $70,000 proposed advance by the Detroit & Cleveland Navigation Company to pay off the balance of the mortgage as of October 15, 1937 and will use the balance of the money to make the conversion as suggested above. The Automotive Trades Steamship Company will then give to the Detroit & Cleveland Navigation Company, a mortgage for such moneys advanced, which it is proposed will be paid back over a period of two years. The Automotive Trades Steamship Company has some funds available with which we could insure the completion

382 of the work of conversion if the amount exceeded the $70,000 advanced.

It is Mr. McMillan's idea that this loan should be cleaned up in two years. The advance could be made against a two-year charter from the Detroit & Cleveland Navigation Company on a basis of twenty-seven thousand five hundred ($27,500) dollars per year, which is the same amount that the Detroit & Cleveland Navigation Company is now paying the Automotive Trades Steamship Company for the Steamer "Morris S. Tremaine."

It is further proposed to cancel that part of the agreement between the Detroit & Cleveland Navigation Company and the Automotive Trades Steamship Company, as it relates to the yearly charter of the Steamer "Morris S. Tremaine," and which is to be chartered to the Detroit & Cleveland Navigation Company on a month-to-month basis at a figure to be arrived at later.

It is felt it will be absolutely necessary that we have another automobile carrier for the balance of this year, and I am urging prompt action in this matter so that we can immediately make arrangements to convert "George H. Ingalls" into an automobile carrier, with an estimate that the "Ingalls" should be ready, as an automobile carrier, the early part of November. The present charter with the Detroit & Cleveland Navigation Company is to be in force and effect until the "Ingalls" is made available for carrying automobiles. The "Ingalls" is an absolute sister ship of the "Tremaine," and was dry-docked in February of 1937. A new tailshaft, stern tube, stern tube bearing, and new hub were installed, and it is stated that she will carry as many cars as the "Tremaine," which is approximately 400 automobiles per load.

The "Ingalls" is at the present time under a two-year charter to the Cleveland-Cliffs Iron Company, who only last week brought the vessel in on account of some cancellation of ore-carrying contracts, and she is now at the Great Lakes Engineering Works, Ecorse, Michigan, available, after the necessary
383 notices have been sent to the Cleveland-Cliffs Iron Company, to commence immediately the conversion into an automobile carrier. The terms of the two-year charter with the Cleveland-Cliffs Iron Company provide that at the option of the Automotive Trades Steamship Company, at the end of the present season, 1937, if the Automotive Trades Steamship Company elects to convert the "Ingalls" into an automobile carrier, the charter with the Cleveland-Cliffs Iron Company is, of course, cancelled.

Proposal No. 2. While we have had some discussion in connection with the Detroit & Cleveland Navigation Company making an outright purchase of the Steamer "George W. Mead," there was a difference of opinion as to the purchase price to be paid. The

writer feels that the offer of the "Mead" at the price of one hundred fifty thousand ($150,000) dollars can be justified from both the basis of earnings, and the present day value of a vessel of this size and type of the "George W. Mead," and also considering the fact that she is under a five year optional charter with the Detroit & Cleveland Navigation Company on the basis of $20,000 per year. Mr. McMillan's idea was that the Detroit & Cleveland Navigation Company did not have the funds available at this time to purchase the vessel without affecting the reserve of the Detroit & Cleveland Navigation Company to a point where Mr. McMillan did not feel he would want to go.

There will be unpaid, after the October 15, 1937, payment, on the Steamer "George W. Mead," a balance of forty-eight thousand, four hundred eighty-five ($48,485) dollars on her mortgage. With the further payment of $4,545 between now and the end of the season, this would bring the figure down to $45,000 which I mentioned would be owing to the Consolidated Water Power & Paper Company at the end of the season. The details of the principal payments of the mortgage for the balance of this year are as follows:

384 $1,515.00, October 31, 1937.
$1,515.00, November 15, 1937.
$1,515.00, November 30, 1937;
and no further payments until May 15, 1938.

The schedule of mortgage payments after May 15, 1938, is as follows:

For the months of May, through November 1938, 14 semimonthly payments in the amount of $1,620 are to be made on the 15th and end of each month totaling $22,600, which includes interest.

For the months of May, through November 1939, 14 semimonthly payments in the amount of $1,900 each are to be made on the 15th and end of each month, totaling $26,600, which includes interest.

The writer will guarantee that the mortgagee, Consolidated Water Power & Paper Company, will agree to an assignment of the balance unpaid on the mortgage to the Detroit & Cleveland Navigation Company. On the basis of a sale price of $150,000 this would leave a balance due to the T. J. McCarthy Steamship Company of $105,000, of which amount arrangements can be made for a possible cash payment of $70,000 immediately, which $70,000 would be used by the Automotive Trades Steamship Company to carry out the plan on the "Ingalls" discussed earlier in this proposal.

If, however, the payment of the $70,000 might be considered by the Detroit & Cleveland Navigation Company as affecting their present surplus, then I feel that certainly the amount of thirty-

five to forty thousand dollars should be forthcoming immediately, which amount would be used for the conversion cost, the Automotive Trades Steamship Company still continuing with the present mortgage on the "Ingalls." Under this plan, the Detroit & Cleveland Navigation Company would be obligated to an approximate $25,000 per year payments on the "Mead," to the Consolidated Water Power & Paper Company; and, after the down payment of $35,000 to the T. J. McCarthy Steamship Company (which will be used to convert the "Ingalls") deducting this from the $105,000 due the McCarthy Steamship Company, the
385 balance of $70,000 would be paid over a period of 1938 and 1939.

While it is felt by the Detroit & Cleveland Navigation Company that the price of $150,000 is too high for the "Mead," and the writer feels that the price is justified, as stated before on the basis of earnings and present value, as a compromise on the sale price of the "Mead," we would be willing to offer the "Mead" on the corrected basis of $140,000, and the adjustment of the difference in the sale price as originally set up, and $140,000 can be worked out. At this time, it would be for the protection of the T. J. McCarthy Steamship Company on the unpaid balance of the mortgage considering that the Consolidated Water Power & Paper Company will have the First Preferred Marine Mortgage, that the Detroit & Cleveland Navigation Company should give to the T. J. McCarthy Steamship Company, a Second Mortgage for the amount of the sale not paid.

It will also be necessary, and the T. J. McCarthy Steamship Company will arrange, to obtain the consent of the Shipping Board of the transfer of the vessel to the Detroit & Cleveland Navigation Company.

It is the honest and sincere opinion of the writer that the earnings of the Str. "George W. Mead" should pay for itself over a period of not to exceed two years. Your figures of actual cost and earnings will substantiate the fact that this boat can pay for itself in two years. And, with the arrangements being made for the carrying of the present mortgage to Consolidated Water Power & Paper company over a period of two years, together with the writer's arrangements for the payment of the balance, the earnings of the "Mead" should enable her to per her own use within the time stated.

The fact has also been discussed that the carrying capacity of the "Mead" with a very slight expense, can be increased to
386 approximately 300 cars; her present carrying capacity being around 260 cars.

The acceptance of either of these plans will be agreeable to the writer.

(Signed) T. J. McCarthy.

SUPPLEMENT TO OCTOBER 19, 1937, PROPOSAL

It is suggested that if the Detroit & Cleveland Navigation Company advance the $35,000.00 with which to convert the steamer "George H. Ingalls" into an automobile carrier, and the Automotive Trades Steamship Company accepts such a proposal and forego its present opportunity to sell the ship as a bulk carrier, that the Detroit & Cleveland Navigation Company shall enter into an unconditional charter of the steamer "Ingalls" for the remainder of this season and for the season of 1938 and pay as net charter hire for the vessel a sum sufficient to pay the $35,000.00 loan. It would be understood that if such a charter was entered into that the Detroit & Cleveland Navigation Company would not in any way be obligated to charter the steamer "Tremaine" for the season of 1938. The general terms and provisions of the charter will be similar to the terms and provisions of the charters now in force on the "Mead" and "Tremaine," except that there will be no provision that charter hire not be paid in the event of a strike in the automotive industry.

The steamer "Tremaine" could be operated, if needed, on a month to month basis during the season of 1938 and it is suggested that the terms and conditions under which she would be operated be covered by agreement made at the same time as the agreement or agreements relative to the payments.

(Signed) T. J. McCarthy.

387

Exhibit No. 24

Witness: Hoffman

Statement showing number automobiles transported on the steamer "George W. Mead," owned by the T. J. McCarthy Steamship Company, and the steamers "T. J. McCarthy" and "George H. Ingalls," owned by the Automotive Trades Steamship Company

STEAMER "GEORGE W. MEAD"

Year	Detroit to Buffalo	Detroit to Cleveland	Cleveland and Buffalo to Detroit	Cleveland to Buffalo	Buffalo to Cleveland	Totals
1935	9,163	2,392	See Note A	See Note A	980	12,535. See Note B.
1936	13,516	6,315	do	do	See Note A	19,831. See Note B.
1937	13,921	10,592	do	do	do	24,513. See Note B.
1938	8,368	1,132	do	do	do	9,500. See Note B.
1939	12,142	7,626	do	do	do	19,768. See Note B.
1940	14,853	4,025	47	241	1,792	20,958.
1941	13,552	9,107	106	234	1,032	24,031.

STEAMER T. J. McCARTHY

1936	928					928.
1937	35,335	2,997	See Note A	See Note A	See Note A	38,332. See Note B.
1938	7,053	749	do	do	do	7,802. See Note B.
1939	20,102	4,277	do	do	do	24,379. See Note B.
1940	25,771	6,991	19	2,2	1,550	32,579.
1941	28,717	2,813	71	0	922	32,223.

STEAMER "GEORGE H. INGALLS"

1940	20,674	1,350	07	53	1,620	24,204.
1941	27,723	974	03		539	29,239.

Note A—Figures not available in our office.
Note B—Total not complete inasmuch as figures referred to in note A not available in our office.

388

Exhibit No. 25

Witness: Hoffman

Statement showing total number automobiles transported under arrangement between the T. J. McCarthy Steamship Company and the Detroit and Cleveland Navigation Company and percentage carried on vessels owned by Automotive Trades Steamship Company and T. J. McCarthy Steamship Company as a comparison to number carried on vessels owned by Detroit and Cleveland Navigation Company

Year	Total automobiles transported by Detroit & Cleveland Navigation Company (exclusive of tourist cars)	Number automobiles transported on vessels owned by Automotive Trades Steamship Company and T. J. McCarthy Steamship Company	Number automobiles transported on vessels owned by Detroit & Cleveland Navigation Company	Percentage of automobiles transported on vessels owned by Automotive Trades Steamship Company and T. J. McCarthy Steamship Company	Percentage of automobiles transported on vessels owned by Detroit & Cleveland Navigation Company
				Percent	*Percent*
1937	86,671	52,545	34,126	60.62	39.38
1938	40,282	17,302	22,980	42.95	57.05
1939	69,021	44,147	24,874	63.96	36.04
1940	104,804	77,741	27,123	74.13	25.87
1941	120,203	85,493	34,710	71.12	28.88

389

Exhibit No. 26

Witness: Hoffman

Statement showing number of automobiles on hand at Detroit, 7:00 a. m. daily, seasons of 1940-1941

Date	Number at Shelby St.	Number at Iron St.	Total
1940			
April			
6	61		61
7	4		4
8	4		4
9	204		204
10	29		29
11	17		17
12	55		55
13	4		4
14	32		32
15	32		32
16	10		10
17	4		4
18	125		125
19	13		13
20	0		0
21	6		6
22	0		0
23	9		9
24	375		375
25	581		581
26	330	469	799
27	459	773	1,232
28	314	537	851
29	79	273	352
30	197		197
May			
1	285	217	502
2	196	610	806
3	164	636	800
4	536	209	745
5	492		492
6	97		97
7	66		66
8	315		315
9	465	40	505
10	394	580	974
11	474	328	802
12	390		390
13	0		0
14	123		123
15	294		294
16	493		493
17	124	497	621
18	436	458	894
19	195	458	652
20	27		27
21	38		38
22	398		398
23	336	249	585
24	75	202	277
25	493		493
26	63		63
27	8		8
28	290		290
29	203		203
30	16		16
31	0		0
June			
1	19		19
2	0		0
3	0		0
4	109		109

Date	Number at Shelby St.	Number at Iron St.	Total
1940			
June			
5	70		70
6	292		292
7	255		255
8	303	238	541
9	110		110
10			0
11	168		168
12	88		88
13	157	210	367
14	373	455	828
15	146	785	931
16	62	281	343
17	7	281	288
18	191		191
19	414		414
20	552		552
21	225	337	562
22	204	693	897
23	48		48
24	0		0
25	112		112
26	321		321
27	161		161
28	543	405	948
29	198	814	1,012
30	335	387	722
July			
1	286	387	673
2	234	91	325
3	464	210	674
4	354	405	759
5	91		91
6	168		168
7	1		1
8	1		1
9	136		136
10	324		324
11	270	159	429
12	201	260	461
13	275	321	596
14	0		0
15	0		0
16	146		146
17	30		30
18	15		15
19	136		136
20	15		15
21	16		16
22	0		0
23	22		22
24	63		63
25	42		42
26	13		13
27	113		113
28	0		0
29			0
30	19		19
31	129		129
Aug.			
1	19		19
2	11		11
3	134		134
4	0		0

Statement showing number of automobiles on hand at Detroit, 7:00 a. m. daily, seasons of 1940–1943—Continued

Date	Number at Shelby St.	Number at Iron St.	Total
1940			
Aug.			
5	0		6
6	119		119
7	36		35
8	10		10
9	136		136
10	64		64
11	0		0
12			0
13			0
14	1		1
15	120		124
16	12		12
17	35		35
18	101	41	142
19	101	46	147
20	33		33
21	28		28
22	165		165
23	10		10
24	19		19
25	61		61
26	21		21
27	21		21
28	33		33
29	431		431
30	363	179	542
31	253	272	525
Sept.			
1	282	236	518
2	82	297	379
3	33	297	329
4	82	216	298
5	185	376	561
6	288		288
7	454		454
8	673		673

Date	Number at Shelby St.	Number at Iron St.	Total
1940			
Sep.			
9	6		8
10	44		44
11	102		102
12	94		94
13	138		138
14	96		96
15	74		74
16			0
17	102		102
18	145		145
19	377		377
20	524		524
21	390		390
22	235		235
23	0		0
24	217		217
25	319		319
26	162		162
27	139		139
28	208	245	453
29	275		275
30	0		0
Oct.			
1	300		300
2	96	387	483
3	340	779	1,119
4	350	703	1,123
5	753	781	1,534
6	880	244	1,124
7	587	244	831
8	527	368	895
9	240	641	881
10	455	673	1,128
11	558	828	1,386
12	949	883	1,832
13	816	501	1,317

Date	Number at Shelby St.	Number at Iron St.	Number at Adair St.	Total
1940				
Oct.				
14	515	287		802
15	565	289		854
16	252	682		934
17	610	593		1,203
18	654	684		1,338
19	804	784		1,588
20	468	389		857
21	196	251		447
22	428	460		888
23	452	439		891
24	520	457		977
25	445	456		901
26	680	578		1,258
27	485	404		709
28	240	262		502
29	411			411
30	195	332		527
31	313	362		675

Date	Number at Shelby St.	Number at Iron St.	Number at Adair St.	Total
1940				
Nov.				
1	496	612		1,108
2	587	586		1,173
3	398	197		595
4	192			192
5	489	250		739
6	263	264		527
7	546	237		783
8	492	544		1,036
9	697	521		1,218
10	269	414		683
11	276	414		690
12	572	71		643
13	231	691		922
14	709	706		1,415
15	948	806	186	1,940
16	1,005	255	420	1,680
17	822	674		1,495
18	575	674		1,249

Statement showing number of automobiles on hand at Detroit, 7:00 a. m. daily, seasons of 1940–1941—Continued

Date	Number at Shelby St.	Number at Iron St.	Number at Adair St.	Total	Date	Number at Shelby St.	Number at Iron St.	Number at Adair St.	Total
1940					1940				
Nov.					*Nov.*				
19	991	506		1,497	25	22	236		[illegible]
20	659	824		1,483	26	393	417		810
21	1,139	858		1,997	27	618	119		737
22	678	456		1,133	28	557	345		902
23	661	762		1,423	29	781	548		1,329
24	646	392		1,038	30	749	717		1,466

Date	Number at Shelby St.	Number at Iron St.	Total	Date	Number at Shelby St.	Number at Iron St.	Total
1940				1940			
Dec.				*Dec.*			
394 1	401	326	727	6	395		395
2	151	191	342	7	468		468
3	508		508	8	473		473
4	570		570	9	245		245
5	515		515	10			

Statement showing number of automobiles on hand at Detroit, 7:00 a. m. daily, season of 1941

Date	Number on hand at Shelby St.	Number on hand at Iron St.	Number on hand at Clark St.	Total	Date	Number on hand at Shelby St.	Number on hand at Iron St.	Number on hand at Clark St.	Total
1941					1941				
April					*May*				
1	7			7	1	101	527		628
2	40			40	2	851	555		1,406
3	0			0	3	838	703		1,541
4	82			82	4				982
5	32			32	5		308		308
6	37			37	6	279	196		475
7	31			31	7	172	642		814
8	212			212	8	573	481		1,054
9	230			230	9	493	280	210	983
10	217			217	10	495	713	245	1,453
11	257			257	11				1,320
12	5			5	396 12	16	297		313
13	5			5	13	215	731		946
14	108			108	14	208	354		562
15	246			246	15	414	635		1,049
16	823			823	16	666	491		1,157
17	758			758	17	278	713		991
18	534	810		1,345	18				878
19	214	830		1,044	19				0
20	214	830		1,044	20	341			341
21	62	206		268	21	266	381		647
22	323	447		970	22	639	692		1,331
23	455	739		1,194	23	557	689	323	1,569
24	587	711		1,298	24	482	490	637	1,609
25	700	857	197	1,754	25				741
26	696	196	709	1,601	26			238	238
27				1,730	27	107	379		486
28	76	880	725	981	28	338	561		899
29	93	390	552	1,035	29	542	719		1,261
30	197	855	171	1,223	30	536	839	101	1,526
					31	491	223	101	815

Statement showing number of automobiles on hand at Detroit, 7:00 a. m. daily, season of 1941.—Continued

Date	Number on hand at Shelby St.	Number on hand at Iron St.	Number on hand at Clark St.	Total
1941				
June				
1				230
2				0
3	109	194		303
4	116	466		582
5	224	886		1,110
6	445	783	146	1,264
7	266	844	210	1,320
8				658
9	139	124		263
10	314	508	90	912
11	227	771		998
12	464	816		1,280
13	263	678	267	1,208
14	492	463	319	1,274
15	325	69	320	714
16	204	66	336	605
17	313	361	205	879
18	331	499		830
19	480	635		1,114
20	584	839		1,323
21	569	928		1,497
22				507
23	93	181		274
24	74	290		364
25	256	379	1	635
26	296	762		1,058
27	283	604		887
28	266	827		1,093
29	103			103
30	73			73
July				
1	95	317		412
2	60	26		86
3	150	415		565
4				860
5	298	141		439
6				224

Date	Number on hand at Shelby St.	Number on hand at Iron St.	Number on hand at Clark St.	Total
1941				
July				
7				0
8	224			224
9	27			27
10	171	318		489
11	180			180
12	71			71
13	77			77
14				1
15	54			54
16	164			164
17	382			382
18	375	290		665
19	382	505		887
20				412
21	10			10
22	155			155
23	668			668
24	291	303		594
25	363	368		731
26	304	634		938
27	10			10
28				9
29	85			85
30	15			75
31	217			217
Aug.				
1	94			94
2				0
3	14			14
4	19			19
5	6			6
6	52			52
7	6			6
8	141			141
9	1			1
10				9

Date	Number on hand at Shelby St.	Number on hand at Iron St.	Total
1941			
Aug.			
11	0		0
12	112		112
13	0		0
14	65		65
15	100		100
16	122		122
17	280		280
18	18		18
19	222		222
20	394		394
21	64		64
22	279		279
23	0		0
24	0		0
25	0		0
26	4		4
27	0		0
28	6		6
29	11		11
30	15		15
31	6		6

Date	Number on hand at Shelby St.	Number on hand at Iron St.	Total
1940			
Sept.			
1	0		0
2	2		2
3	1		1
4	2		2
5	192		192
6	54		54
7	2		2
8	2		2
9	103		103
10	35		35
11	52		52
12	36		36
13	367		367
14	215		215
15	0		0
16	68		68
17	61		61
18	211		211
19	337		337
20	302		302

Statement showing number of automobiles on hand at Detroit, 7:00 a. m. daily, season of 1941—Continued.

Date	Number on hand at Shelby St.	Number on hand at Iron St.	Total
1940			
Sept.			
21	133		133
22	17		17
23	59		59
24	180		180
25	549		549
26	522		522
27	682	393	1,075
28			529
29	503		503
30	173		173
Oct.			
1	414		414
2	502		502
3	589		589
4	658		658
5			451
6	37		37
7	111		111
8	412		412
9	541		541
10	668		668
11	470	158	628
12			206
13	197		197
14	428		428
15	323		323
16	250	226	476
17	363	215	578
18	676	266	942
19			410
20	12		12
21	116		116
22	117		117
23	434	176	610
24	489	484	973
25	568	336	904
26			603
27	9		9
28	347		347
29	543		543
30	362	162	524
31	617	243	860

Date	Number on hand at Shelby St.	Number on hand at Iron St.	Total
1940			
Nov.			
1	549	351	900
2			830
3	830		830
4	486		486
5	455	256	711
6	573	204	777
7	371	442	813
8	909	747	1,656
9			1,555
10	485	750	1,235
11	638	371	1,009
12	665	487	1,152
13	843	686	1,529
14	936	686	1,622
15	1,293	802	2,095
16			1,372
17	769	180	949
18	807	300	1,107
19	428	625	1,053
20	631	632	1,263
21	810	259	1,069
22	897	132	1,029
23			498
24	142		142
25	382		382
26	365		365
27	437		437
28	823		823
29	631		631
30	1		327
Dec.			
1	12		12
2	132		132
3	377		377
4	731	249	980
5	232	564	796
6	863	342	1,205
7			979
8	371		371
9	238		238
10	238		238

401

Exhibit No. 27

Witness: Hoffman

Statement showing operation of Steamer "George H. Ingalls" owned by the Automotive Trades Steamship Co. from October 2, 1936, through season of navigation, 1939

Cargo No. 1	Coal	Toledo to Green Bay, Wisconsin	10- 8-36
Cargo No. 2	Sand	Manistee to River Rouge, Michigan	10-14-36
Cargo No. 3	Coal	Sandusky, Ohio, to Milwaukee, Wisconsin.	10-18-36
Cargo No. 4	Sand	Manistee, Michigan, to River Rouge, Mich.	10-23-36
Cargo No. 5	Coal	Sandusky, Ohio, to Menominee, Mich.	10-26-36
Cargo No. 6	Sand	Manistee, Michigan, to River Rouge, Mich.	10-31-36
Cargo No. 7	Coal	Sandusky, Ohio, to Milwaukee, Wisconsin.	11- 4-36

Statement showing operation of Steamer "George H. Ingalls" owned by the Automotive Trades' Steamship Co. from October 2, 1936, through season of navigation, 1939—Continued

Cargo No. 8	Sand	Manistee, Michigan, to River Rouge, Mich.	11-10-36
Cargo No. 9	Coal	Sandusky, Ohio, to Milwaukee, Wisconsin	11-14-36
Cargo No. 10	Sand	Manistee, Michigan, to River Rouge, Mich.	11-20-36

SEASON OF 1937

Chartered to Cleveland-Cliffs Iron Company, operated by them in bulk trade, carrying coal, stone, and ore to and from Lakes Michigan and Superior

SEASON OF 1938

Cargo No. 1	Silica Rock	Killarney Quarries, Ont., to Buffalo, N. Y.	9-18-38
Cargo No. 2	Coal	Sandusky, Ohio, to Hubbell, Mich.	9-24-38
Cargo No. 3	Refuse screenings	Port Arthur, Ont., to So. Chicago, Ill.	9-30-38
Cargo No. 4	Grain	Chicago, Ill., to Buffalo, N. Y.	10- 6-38
Cargo No. 5	Coal	Toledo, O., to Menominee, Mich.	10-12-38
Cargo No. 6	Grain	South Chicago, Ill., to Buffalo, N. Y.	10-18-38
Cargo No. 7	Coal	Toledo, O., to Superior, Wisc.	10-26-38
Cargo No. 8	Grain	Superior, Wisc., to Buffalo, New York.	10-31-38
Cargo No. 9	Coal	Toledo, O., to Milwaukee, Wisc.	11-10-38
402 Cargo No. 10	Corn	So. Chicago, Ill., to Toronto, Ont.	11-16-38
Cargo No. 11	Coal	Conneaut, O., to Milwaukee, Wisc.	11-23-38
Cargo No. 12	Grain	So. Chicago to Buffalo, N. Y.	11-28-38
Cargo No. 13	Coal	Conneaut to Ecorse, Mich.	12- 8-38

SEASON OF 1939

Cargo No. 1	Grain	Fort William, Ont., to Buffalo, N. Y.	9-22-39
Cargo No. 2	Refuse screenings	Fort William, Ont., to Superior, Wis.	10- 3-39
Cargo No. 3	Grain	Duluth-Superior to Buffalo, N. Y.	10- 9-39
Cargo No. 4	Grain	Duluth-Superior to Buffalo, N. Y.	10-19-39
Cargo No. 5	Refuse screenings	Fort William, Ont., to Superior, Wisc.	10-29-39
Cargo No. 6	Oats	Duluth-Superior to Toledo, Ohio	11- 3-39
Cargo No. 7	Grain	Port Arthur, Ont., to Buffalo, N. Y.	11-13-39
Cargo No. 8	Stone	Buffalo, N. Y., to Toledo, Ohio	11-17-39
Cargo No. 9	Refuse screenings	Fort William, Ont., to Superior, Wis.	11-25-39
Cargo No. 10	Storage Flax	Duluth-Superior to Cleveland, O.	11-30-39

403 *Exhibit No. 28* I. C. C. No. 1

Local Commodity Freight Tariff No. 1, Applying on Automobiles, passenger; Chassis, commercial; Chassis, freight automobile; Chassis, passenger automobile; Hearses, automobile; Trailers, motor vehicle; Trucks, panel or commercial delivery; Trucks, motor vehicle; Set up, on wheels, From Buffalo, New York and Cleveland, Ohio To Cleveland, Ohio and Buffalo, New York

RULES AND REGULATIONS

Marine Insurance

Property (moving under rates named or provided for in this tariff), while in the custody of this Company, from the time this Company receives it from shipper or from prior connecting carrier on docks, piers, wharves, bulkheads, platforms, lighters, and/or craft, transfers, and land conveyances at ports of loading of their vessels and while it is water-borne on vessels at and between ports and while it is on docks, piers, wharves, bulkheads, platforms, lighters, and/or craft, transfers, and land conveyances at port of discharge of vessels, until it is delivered to consignee (but not beyond the free time allowed for delivery as designated by tariff lawfully on file with the Interstate Commerce Commission, nor while held by this Company as warehouseman) or until it is delivered to connecting carriers thereat, is insured:

While water-borne, against the perils of the seas, rivers, lakes, bays, canals, and other waters, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, explosion (howsoever or wheresoever occurring), bursting of boilers, breakage of shafts, latent defect in hull, machinery or appliances, faults or errors in the navigation or management of vessels by the master, mariners, mates, engineers, or pilots and all other like perils or misfortunes, that have or shall come to the hurt, detriment, damage to or loss of the said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable.

While on Docks, Piers, Wharves, Bulkheads, Platforms, Transfers, and Land Conveyances, or elsewhere on shore, against the risks of fire, lightning, explosion (howsoever or wheresoever occurring), ice, floods, the rising of navigable waters, cyclones, hurricanes, tornadoes, windstorms, transportation, the collapse and/or subsidence of docks, piers, wharves, bulkheads, platforms, and/or of any buildings thereon.

Issued February 27, 1941. Effective March 1, 1941. Issued on one day's notice under authority of Rule 1. (c) of Tariff circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Michigan.

Losses payable within Thirty Days after proof of loss and proof of interest in said property have been furnished.

Applicable only to the Automotive Trades Steamship Company and to the property while in its custody; and the liability herein assumed is that of this company only.

Special Charges and Allowances

Shipments transported under this tariff will be allowed (168 hours) seven days free time after the first seven A. M. after notice of arrival has been given in writing or as otherwise agreed, and will, after the expiration of the free time, be subject to a storage charge of ten cents per day or fraction thereof, per vehicle, minimum charge fifty cents per vehicle. At any time after the expiration of the (168 hours) seven days free time referred to above, the carrier reserves the right to forward such shipments to a public warehouse. Such shipments will be transported from the docks of the carrier to a public warehouse at the expense of the owner, and there held without liability on the part of the carrier, subject to lien for freight and other lawful charges, including a reasonable charge for storage.

Suspension and Restoration of Rates

The rates named in this tariff are effective only during the season of navigation of the Automotive Trades Steamship Company, which is from March 10th to December 12th.

Rates

(Rates in dollars and cents per vehicle)

FROM BUFFALO, NEW YORK, TO CLEVELAND, OHIO

Over-all measurement:	Rates
Cars 14 feet 6 inches and under	$6.50
Cars over 14 feet 6 inches	7.00

FROM CLEVELAND, OHIO, TO BUFFALO, NEW YORK

Over-all measurement:	Rates
Cars 14 feet 6 inches and under	$6.50
Cars over 14 feet 6 inches to and including 15 feet	7.00
Cars over 15 feet to and including 17 feet	8.00
Cars over 17 feet to and including 17 feet 6 inches	8.50
Cars over 17 feet 6 inches to and including 19 feet	9.00

For each additional 6 inches or fraction thereof, over 19 feet add 50 cents.

404

I. C. C. No. 2

AUTOMOTIVE TRADES STEAMSHIP COMPANY

Local Commodity Freight Tariff No. 2 Applying on Automobiles, Passenger; Chassis, Commercial; Chassis, Freight Automobile; Chassis, Passenger Automobile; Hearses, Automobile; Trailers, Motor Vehicle; Trucks, Panel or Commercial Delivery; Trucks, Motor Vehicle, Set up, on Wheels, Between Detroit, Mich. and Erie, Pa.

RULES AND REGULATIONS

Marine Insurance

Property (moving under rates named or provided for in this tariff), while in the custody of this Company, from the time this Company receives it from shipper or from prior connecting carriers or docks, piers, wharves, bulkheads, platforms, lighters, and/or craft, transfers, and land conveyances at ports of loading of their vessels and while it is water-borne on vessels at and between ports and while it is on docks, piers, wharves, bulkheads, platforms, lighters, and/or craft, transfers, and land conveyances at port of discharge of vessels, until it is delivered to consignee (but not beyond the free time allowed for delivery as designated by tariff lawfully on file with the Interstate Commerce Commission, nor while held by this Company as warehouseman) or until it is delivered to connecting carriers thereat, is insured:

While Water-borne, against the perils of the seas, rivers, lakes, bays, canals, and other waters, fire collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, explosion (howsoever or wheresoever occurring), bursting of boilers, breakage of shafts, latent defect in hull, machinery or appliances, faults, or errors in the navigation or management of vessels by the master, mariners, mates, engineers, or pilots, and all other like perils or misfortunes, that have or shall come to the hurt, detriment, damage to or loss of the said property or any part thereof, including general average charges and expenses for which the owner may under maritime law be chargeable.

While on Docks, Piers, Wharves, Bulkheads, Platforms, Transfers and Land Conveyances, or elsewhere on shore, against the risks of fire, lightning, explosion (howsoever or wheresoever occurring), ice, floods, the rising of navigable waters, cyclones, hurricanes, tornadoes, windstorms, transportation, the collapse and/or subsidence of docks, piers, wharves, bulkheads, platforms, and/or of any buildings thereon.

Issued February 27, 1941. Effective March 1, 1941. Issued on one day's notice under authority of Rule 1-(a) of Tariff Circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Michigan.

Losses Payable Within Thirty Days after proof of loss and proof of interest in said property have been furnished.

Applicable only to the Automotive Trades Steamship Company and to the property while in its custody; and the liability herein assumed is that of this Company only.

Special Charges and Allowances

Shipments transported under this tariff will be allowed (168 hours) seven days free time after the first seven A. M., after notice of arrival has been given in writing or as otherwise agreed, and will, after the expiration of the free time, be subject to a storage charge of ten cents per day or fraction thereof, per vehicle, minimum charge fifty cents per vehicle. At any time after the expiration of the (168 hours) seven days free time referred to above, the carrier reserves the right to forward such shipments to a public warehouse. Such shipment will be transported from the docks of the carrier to a public warehouse at the expense of the owner, and there held without liability on the part of the carrier, subject to lien for freight and other lawful charges, including a reasonable charge for storage.

Suspension and Restoration of Rates

The rates named in this tariff are effective only during the season of navigation of the Automotive Trades Steamship Company, which is from March 10th to December 12th.

Rates between Detroit, Mich., and Erie, Pa.

[Rates in dollars and cents per automobile]

Over-all measurement:	Rates
Cars 13 feet and under	9.50
Cars over 13 feet to and including 13 feet 6 inches	10.00
Cars over 13 feet 6 inches to and including 14 feet	10.50
Cars over 14 feet to and including 14 feet 6 inches	11.00
Cars over 14 feet 6 inches to and including 15 feet	11.50
Cars over 15 feet to and including 15 feet 6 inches	12.00
Cars over 15 feet 6 inches to and including 16 feet	12.50
Cars over 16 feet to and including 16 feet 6 inches	13.00
Cars over 16 feet 6 inches to and including 17 feet	13.50
Cars over 17 feet to and including 17 feet 6 inches	14.00
Cars over 17 feet 6 inches to and including 18 feet	14.50
Cars over 18 feet add 50 cents for each additional 6 inches or fraction thereof.	

Automotive Trades Steamship Company

Local Freight Tariff No. 3 Naming Wharfage Allowance for Detroit, Michigan, River District

DETROIT, MICHIGAN, RIVER DISTRICT

Beginning at Connors Creek on the American side of the Detroit River on the East, thence West and South along the American Side of the Detroit River to and including the Ecorse River, and all navigable waters within the above boundaries.

WHARFAGE ALLOWANCE.

When the Automotive Trades Steamship Company uses a privately owned dock of an automobile manufacturer for the loading of their motor vehicles for transportation beyond the port, an allowance of fifty (50¢) cents per vehicle will be made out of the current Detroit, Michigan rate to the owner of the dock so used for the loading and dockage facilities furnished. This allowance only applies on vehicles in lots of fifty (50) or more.

Issued February 27, 1941. Effective March 1, 1941. Issued on one day's notice under authority of Rule 1 (c) of Tariff Circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Michigan.

406 I. C. C. No. 4

AUTOMOTIVE TRADES STEAMSHIP COMPANY

Freight Tariff No. 4, Naming Rules Governing Storage, Reconsignment, and Other Transit Privileges on Motor Vehicles in Public Warehouses at Buffalo, N. Y.

Issued February 27, 1941. Effective March 1, 1941. Issued on one day's notice under authority of Rule 1. (c) of Tariff circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Michigan.

RULES GOVERNING STORAGE, RECONSIGNMENT AND OTHER TRANSIT PRIVILEGES ON MOTOR VEHICLES IN PUBLIC WAREHOUSES AT BUFFALO, N. Y.

Motor vehicles, arriving at Buffalo, N. Y., via the Automotive Trades Steamship Company and stored in Public Warehouses located within the Corporate Limits of Buffalo, N. Y., by order of shippers or consignees will be subject to the following rules:

1. Shippers or consignees must make arrangements for storage with the public warehouse concerned.

2. This Company will not assume any of the expense of transferring the motor vehicles from its automobile yard at Buffalo, N. Y., to the public warehouse concerned.

3. While such motor vehicles are stored in transit in the public warehouse under these rules, the custody and possession of same, as between the Automotive Trades Steamship Company and the shipper, consignee or owner, shall be that of the shipper, consignee, or owner.

4. Shipments stored in transit under these rules may be reconsigned to points beyond Buffalo, N. Y., at the through rates in effect at time of shipment from point of origin to final destination

but this Company will not assume any of the expense of delivering the shipments from the public warehouse to the outbound carrier.

5. Shipments will be subject to local rates from point of origin to Buffalo, N. Y., pending reconsignment, and charges, if not prepaid, will be collected by the Automotive Trades Steamship Company at such rates.

6. While the Motor Vehicles are in storage in the public warehouse they may be cleaned, polished, serviced, and/or washed, in line with arrangements made by shipper or consignee with the public warehouse concerned.

7. The period of time allowed for the protection of the through rate on shipments stored in transit under these rules will be ninety (90) days from the date such shipments are taken from this Company's possession for storage in the public warehouse. As to any shipments on which the time limit as above described, has expired, the transit privilege shall absolutely cease and the local rate to Buffalo, N. Y., in effect at the time of shipment from point of origin, will be assessed.

8. When the motor vehicles are shipped from Buffalo, N. Y., under transit rate, shipper will be required to present to the outbound carrier the in-bound carrier's legally representative freight bills (see Rule 10) and shipping directions bearing or accompanied by shippers' certificate as shown below and such in-bound freight bill which has been recorded for transit, shall be immediately cancelled by inscription to that effect thereon.

407 SHIPPER'S CERTIFICATE

Tender is hereby made to the _____ (out-bound carrier) of _____ (in-bound carrier) freight bills, as listed herein, for the purpose of securing reshipping privilege and transit rate on the motor vehicles covered thereby and which _____ further declare to be the freight bill _____ representative of the property offered for release or reconsignment, consisting of the following in-bound shipments: _____

_____

_____

_____

This tender is made with a guarantee on _____ part that such privilege may be granted in conformity with the rules of said carrier as published in _____ Tariff I. C. C. No. _____ supplements thereto and subsequent issues thereof, which have been read and with which _____ familiar.

_____

Signature of Shipper

The carrier transporting the motor vehicles from Buffalo shall furnish the Automotive Trades Steamship Company with a copy of its out-bound billing or similar document as evidence of furtherance of the shipments.

9. The Automotive Trades Steamship Company shall have access at all times to the transit house and records to check up all shipments therein and the freight bills on hand.

10. The privileges at Buffalo, N. Y. referred to in these rules will be accorded only to parties who comply with the rules provided herein, who will keep records and make reports in a manner satisfactory to the Automotive Trades Steamship Company and who will make affidavit when required, as to accuracy of all records and information furnished by them to the Automotive Trades Steamship Company.

Transit privileges will be accorded only when tariff under which transit rate is applied permits application of such privileges on motor vehicles moving under such tariff.

11. These arrangements will not apply on motor vehicles which cannot be operated under their own power.

12. The arrangements provided herein will be policed by representatives of the Automotive Trades Steamship Company.

408 I. C. C. No. 5

AUTOMOTIVE TRADES STEAMSHIP COMPANY

Tariff No. 5

LOCAL AND PROPORTIONAL FREIGHT TARIFF NAMING COMMODITY RATES ON AUTOMOBILES, PASSENGER; CHASSIS, COMMERCIAL AUTOMOBILE; CHASSIS, FREIGHT AUTOMOBILE; CHASSIS, PASSENGER AUTOMOBILE; HEARSES, AUTOMOBILE; TRACTORS, VEHICLE; TRUCKS, PANEL OR COMMERCIAL DELIVERY; TRUCKS, MOTOR VEHICLE, AS DESCRIBED HEREIN BETWEEN DETROIT, MICHIGAN AND CLEVELAND, OHIO AS SHOWN HEREIN

The rates named herein are subject to suspension at the close and restoration on the opening of navigation as provided on page No. 2.

Issued February 27, 1941. Effective March 1, 1941. Issued on one day's notice under authority of Rule 1 (c) of Tariff Circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Mich.

Subject	Page No.
Rates, Commodity	3
Rules governing Tariff:	
Discontinuance of Service	2
Diversion in Transit	3
Marine Insurance	2
Rates on Accessories or Attachments	3
Terminal Privileges	2
Storage	2

Index to Commodities

Article	Item No.	Article	Item No.
Automobiles, passenger	20	Tractors, vehicle	20
Chassis, commercial automobile	20	Trucks, panel or commercial delivery	20
Chassis, freight automobile	20	Trucks, motor vehicle	20
Chassis, passenger automobile	20		
Hearses, automobile	20		

Rules and Regulations

DISCONTINUANCE AND RESTORATION OF SERVICE

The rates named in this tariff are effective only during the season of navigation of the Automotive Trades Steamship Company, which is from March 10th to December 12th.

TERMINAL AND OTHER PRIVILEGES

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by carrier or their agents, and of carriers or their agents beyond the lines, providing for diversion, reconsignment, storage or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper or consignee, which are lawfully on file with the Interstate Commerce Commission.

MARINE INSURANCE

Property (moving under rates named or provided for in this tariff), while in the custody of this Company, from the time this Company receives it from shipper or from prior connecting carrier on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers and land conveyances at ports of loading of their vessels and while it is waterborne on vessels at and between ports and while it is on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers, and land conveyances

at port of discharge of vessels, until it is delivered to consignee (but not beyond the free time allowed for delivery as designated by tariffs lawfully on file with the Interstate Commerce Commission, nor while held by this Company as warehouseman) or until it is delivered to connecting carriers thereat, is insured:

While waterborne, against the perils of the seas, rivers, lakes, bays, canals and other waters, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, explosion (howsoever or wheresoever occurring), bursting of boilers, breakage of shafts, latent defect in hull, machinery or appliances, faults or errors in the navigation or management of vessels by the master, mariners, mates, engineers or pilots, and all other like perils or misfortunes, that have or shall come to the hurt, detriment, damage to or loss of the said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable.

While on docks, piers, wharves, bulkheads, platforms, transfers and land conveyances, or elsewhere on shore, against the risks of fire, lightning, explosion (howsoever or wheresoever occurring), ice floods, the rising of navigable waters, cyclones, hurricanes, tornadoes, windstorms, transportation, the collapse and/or subsidence of docks, piers, wharves, bulkheads, platforms and/or of any buildings thereon.

Losses payable within thirty days after proof of loss and proof of interest in said property have been furnished.

Applicable only to the Automotive Trades Steamship Company and to the property while in its custody; and the liability herein assumed is that of this Company only.

STORAGE CHARGES

Shipments transported under this tariff will be allowed (168 hours) seven days free time after the first seven A. M. after notice of arrival has been given in writing or as otherwise agreed, and will, after the expiration of the free time be subject to a storage charge of ten cents per day or fraction thereof, per vehicle; minimum charge fifty cents per vehicle. At any time after the expiration of the (168 hours) seven day free time referred to above, the carrier reserves the right to forward such shipments to a public warehouse. Such shipment will be transported from the docks of the carrier to a public warehouse at the expense of the owner, and there held without liability on the part of the carrier, subject to lien for freight and other lawful charges, including a reasonable charge for storage.

409 RATES ON ACCESSORIES, ATTACHMENTS, OR ADVERTISING MATTER

The rates on vehicles as described in this tariff will include all accessories or attachments, including advertising matter, which will form part of the complete vehicle when attached to or placed inside of the vehicle of which they are a part. No charge will be made for the weight of the water or antifreeze solution placed in the radiator or for the oil or gasoline which is necessary for operating the vehicle.

DIVERSION IN TRANSIT

Vehicles described herein may be diverted or reconsigned, and the rate in effect on date of shipment from point of origin to final destination will be protected, no charge being made for change of consignee or destination, provided such diversion or reconsignment is effected while the property is in possession of this Company.

Item 20

Local Commodity Rates on Automobiles, Passenger; Chassis, Commercial Automobile; Chassis, Freight Automobile; Chassis, Passenger Automobile; Hearses, Automobile; Tractors, Vehicle; Trucks, Panel or Commercial Delivery; Trucks, Motor Vehicle; Between Detroit, Michigan, and Cleveland, Ohio.

[Rates in dollars and cents per vehicle]

Over-all measurement:	Rates
Cars 15 feet and under	$6.00
Cars over 15 feet to and including 15 feet 6 inches	6.50
Cars over 15 feet 6 inches to and including 16 feet	7.00
Cars over 16 feet to and including 16 feet 6 inches	7.50
Cars over 16 feet 6 inches to and including 17 feet	8.00
For each additional 6 inches or fraction thereof over 17 feet add 50 cents	

410 I. C. C. No. 6

AUTOMOTIVE TRADES STEAMSHIP COMPANY

Tariff No. 6

LOCAL FREIGHT TARIFF NAMING COMMODITY RATES ON AUTOMOBILES, PASSENGER; CHASSIS, COMMERCIAL; CHASSIS, FREIGHT AUTOMOBILE; CHASSIS, PASSENGER AUTOMOBILE; HEARSES, AUTOMOBILE; TRACTORS, VEHICLE; TRUCKS, PANEL OR COMMERCIAL DELIVERY; TRUCKS, MOTOR VEHICLE, AS DESCRIBED HEREIN BETWEEN DETROIT, MICH., AND BUFFALO, N. Y.

The rates named herein are subject to suspension at the close and restoration on the opening of navigation as provided on page No. 2.

Issued February 27, 1941. Effective March 1, 1941. Issued on one day's notice under authority of Rule 1 (c) of Tariff circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Mich.

APPLICATION OF TARIFF

The rates named herein will apply from and to established points of receipt and delivery of the Automotive Trades Steamship Company.

DISCONTINUANCE AND RESTORATION OF SERVICE

The rates named in this tariff are effective only during the season of navigation of the Automotive Trades Steamship Company, which is from March 10th to December 12th.

TERMINAL AND OTHER PRIVILEGES

Except as otherwise provided herein, shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by carrier or their agents, providing for diversion, reconsignment, storage or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper or consignee, which are lawfully on file with the Interstate Commerce Commission.

MARINE INSURANCE

Property (moving under rates named or provided for in this tariff, while in the custody of this Company, from the time this Company receives it from shipper or from prior connecting carrier on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers and land conveyances at ports of loading of their vessels and while it is waterborne on vessels at and between ports and while it is on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers, and land conveyances at port of discharge of vessels, until it is delivered to consignee (but not beyond the free time allowed for delivery as designated by tariffs lawfully on file with the Interstate Commerce Commission, nor while held by this Company as warehouseman) or until it is delivered to connecting carriers thereat, is insured:

While Waterborne, against the perils of the seas, rivers, lakes, bays, canals and other waters, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, ex-

plosion (howsoever or wheresoever occurring), bursting of boilers, breakage of shafts, latent defect in hull, machinery or appliances, faults or errors in the navigation or management of vessels by the master, mariners, mates, engineers or pilots, and all other like perils or misfortunes, that have or shall come to the hurt, detriment, damage to or loss of the said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable.

While on Docks, Piers, Wharves, Bulkheads, Platforms, Transfers and Land Conveyances or elsewhere on shore, against the risks of fire, lightning, explosion (howsoever or wheresoever occurring), ice, floods, the rising of navigable waters, cyclones, hurricanes, tornadoes, windstorms, transportation, the collapse and/or subsidence of docks, piers, wharves, bulkheads, platforms and/or of any buildings thereon.

Losses Payable within Thirty Days after proof of loss and proof of interest in said property have been furnished.

Applicable only to the Automotive Trades Steamship Company and to the property while in its custody; and the liability herein assumed is that of this Company only.

RATES ON ACCESSORIES, ATTACHMENTS, OR ADVERTISING MATTER.

The rates on vehicles as decribed in this tariff will include all accessories or attachments, including advertising matter, which will form part of the complete vehicle when attached to or placed inside of the vehicle of which they are a part. No charge will be made for the weight of the water or anti-freeze solution placed in the radiator or for the oil or gasoline which is necessary for operating the vehicle.

STORAGE CHARGE

Shipments transported under this tariff will be allowed (168 hours) seven days free time after the first seven A. M. after notice of arrival has been given in writing or as otherwise agreed, and will, after the expiration of the free time, be subject to a storage charge of ten cents per day or fraction thereof, per vehicle, minimum charge fifty cents per vehicle. At any time after the expiration of the (168 hours) seven day free time referred to above, the carrier reserves the right to forward such shipments to a public warehouse. Such shipment will be transported from the docks of the carrier to a public warehouse at the expense of the owner, and there held without liability on the part of the carrier, subject to lien for freight and other lawful charges, including a reasonable charge for storage.

DIVERSION IN TRANSIT

Vehicles described herein, may be diverted or reconsigned and the rate in effect on date of shipment from point of origin to final destination will be protected, no charge being made for change of consignee or destination provided such diversion or reconsignment is effected while the property is in possession of this Company. Where shipments are reconsigned to destinations beyond the Port, rates lawfully on file with the Interstate Commerce Commission will be applied.

411 Item No. 10

Commodity Rates on Automobiles, Passenger; Chassis, Commercial; Chassis, Freight Automobile; Chassis, Passenger Automobile; Hearses, Automobile; Tractors, Vehicle; Trucks, Panel or Commercial Delivery; Trucks, Motor Vehicle, Set up, on Wheels

[In dollars and cents per vehicle according to weight]

Between Detroit, Michigan, and Buffalo, N. Y.:	Rates
Vehicles weighing 3100 pounds or less	$14.50
Over 3100 to 3400 pounds	16.00
Over 3400 to 3700 pounds	17.50
Over 3700 to 4100 pounds	19.00
Over 4100 to 4500 pounds	20.25
Over 4500 pounds	21.75

412 I. C. C. No. 7

AUTOMOTIVE TRADES STEAMSHIP COMPANY

Tariff No. 7

LOCAL AND JOINT FREIGHT TARIFF NAMING COMMODITY RATES ON AUTOMOBILES, PASSENGER; BUSSES, PASSENGER; CHASSIS, AUTOMOBILE; HEARSES, AUTOMOBILE; TRACTORS, VEHICLE; TRAILERS, MOTOR VEHICLE; TRAILERS, TRACTOR; TRUCKS, MOTOR VEHICLE, BETWEEN DETROIT, MICH. AND DULUTH, MINN.

The rates named herein are subject to suspension at the close and restoration of the opening of navigation as provided on page No. 2.

Rates Named Herein Include Marine Insurance

Issued February 27, 1941. Effective March 1, 1941. Issued on one day's notice under authority of Rule 1 (c) of Tariff circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Mich.

APPLICATION OF RATES

Rates named in this tariff, or as same may be amended, will apply from lake lines docks at point of origin to the receiving room, warehouse, storage yard, or other place controlled by the consignee at billed destination or to a connecting carrier at point of interchange.

Rules and Regulations

DISCONTINUANCE AND RESTORATION OF SERVICE

The rates named in this tariff are effective only during the season of navigation of the Automotive Trade Steamship Company which is from March 20th to November 1st.

TERMINAL AND OTHER PRIVILEGES

Except as otherwise provided herein, shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by carrier or their agents, providing for diversion, reconsignment, storage, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper or consignee, which are lawfully on file with the Interstate Commerce Commission.

STORAGE CHARGES

Shipments transported under this tariff will be allowed (168 hours) seven days free time after the first seven A. M. after notice of arrival has been given in writing or as otherwise agreed, and will, after the expiration of the free time, be subject to a storage charge of ten cents per day or fraction thereof, per vehicle, minimum charge fifty cents per vehicle. At any time after the expiration of the (168 hours) seven days' free time referred to above, the carrier reserves the right to forward such shipments to a public warehouse. Such shipment will be transported from the docks of the carrier to a public warehouse at the expense of the owner, and there held without liability on the part of the carrier, subject to lien for freight and other lawful charges, including a reasonable charge for storage.

MARINE INSURANCE

Property (moving under rates named or provided for in this tariff), while in the custody of this Company, from the time this

Company receives it from shipper or from prior connecting carrier on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers and land conveyances at ports of loading of their vessels and while it is waterborne on vessels at and between ports and while it is on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers, and land conveyances at port of discharge of vessels, until it is delivered to consignee (but not beyond the free time allowed for delivery as designated by tariffs lawfully on file with the Interstate Commerce Commission, nor while held by this Company as warehouseman) or until it is delivered to connecting carriers thereat, is insured:

While Waterborne, against the perils of the seas, rivers, lakes, bays, canals and other waters, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, explosion (howsoever or wheresoever occurring), bursting of boilers, breakage of shafts, latent defect in hull, machinery or appliances, faults or errors in the navigation or management of vessels by the master, mariners, mates, engineers or pilots, and all other like perils or misfortunes, that have or shall come to the hurt, detriment, damage to or loss of the said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable.

While on Docks, Piers, Wharves, Bulkheads, Platforms, Transfers and Land Conveyances, or elsewhere on shore, against the risks of fire, lightning, explosion (howsoever or wheresoever occurring), ice, floods, the rising of navigable waters, cyclones, hurricanes, tornadoes, windstorms, transportation, the collapse and/or subsidence of docks, piers, wharves, bulkheads, platforms and/or of any buildings thereon.

Losses Payable within Thirty Days after proof of loss and proof of interest in said property have been furnished.

Applicable only to the Automotive Trades Steamship Company and to the property while in its custody; and the liability herein assumed is that of this Company only.

Commodity rates

Item No.	Commodity	Between Detroit, Mich., and Duluth, Minn., rates in dollars and cents per vehicle
	Automobiles, Passenger Busses, Passenger Chassis, Passenger Automobile Chassis, Freight Automobile; Hearses, Automobile; Tractors; Motor Vehicle; Trailers, Freight; Trailers, Passengers; Trailers, Tractor; Trucks, Motor Vehicle	
	Overall Measurement:	
	14 feet and under	$21.00
	Over 14 feet to and including 14 feet 6 inches	21.50
	Over 14 feet 6 inches to and including 15 feet	22.00
	Over 15 feet to and including 15 feet 6 inches	22.50
	Over 15 feet 6 inches to and including 16 feet	23.00
	Over 16 feet to and including 16 feet 6 inches	23.50
	Over 16 feet 6 inches to and including 17 feet	24.00
	Over 17 feet to and including 17 feet 6 inches	24.50
	Over 17 feet 6 inches to and including 18 feet	25.50
	Over 18 feet to and including 18 feet 6 inches	26.50
	Over 18 feet 6 inches to and including 19 feet	27.50
	Over 19 feet to and including 19 feet 6 inches	28.50
	Over 19 feet 6 inches to and including 20 feet	29.50
	Over 20 feet to and including 20 feet 6 inches	30.50
	Over 20 feet 6 inches to and including 21 feet	31.50
	Over 21 feet to and including 21 feet 6 inches	32.50
	Over 21 feet 6 inches to and including 22 feet	33.50
	Over 22 feet to and including 22 feet 6 inches	34.50
	Over 22 feet 6 inches to and including 23 feet	35.50
	Over 23 feet to and including 23 feet 6 inches	37.50
	Add $1.00 for each additional 12 inches or fraction thereof over 23 feet 6 inches.	
	NOTE.—For rates on Vehicles (not Busses or Trailers) subsequently shipped from Duluth, Minn., via common carrier to Minneapolis, Minnesota Transfer or St. Paul, Minn., see Item 10.	
	Automobiles; Passenger; Chassis, Passenger Automobile; Chassis, Freight Automobile; Hearses, Automobile; Tractors, Vehicle; Trailers, Motor Vehicle	
	Wheelbase Measurement:	
	Under 129 inches	16.00
	129 inches to but not including 144 inches	22.00
	144 inches to but not including 160 inches	30.00
	160 inches to but not including 176 inches	32.00
	176 inches and over	38.00
	NOTE.—Rates, as named in this item, will only apply on Vehicles, as described above, when subsequently shipped from Duluth, Minn., via common carrier to Minneapolis, Minnesota Transfer and St. Paul, Minn. Upon presentation of paid freight expense bill showing that such Vehicles, as described above, subsequently have been shipped from Duluth, Minn., to Minneapolis, Minnesota Transfer or St. Paul, Minn., via common carrier, adjustment will be made based upon the difference between the charges under the rates named in this item and the rates named in Item No. 5.	

RATES ON ACCESSORIES, ATTACHMENTS, OR ADVERTISING MATTER

The rates on vehicles as described in this tariff will include all accessories or attachments, including advertising matter, which will form part of the complete vehicle when attached to or placed inside of the vehicle of which they are a part. No charge will be made for the weight of the water or anti-freeze solution placed in the radiator or for the oil or gasoline which is necessary for operating the vehicle.

414

I.C.C. No. 8

AUTOMOTIVE TRADES STEAMSHIP COMPANY

Tariff No. 8

RAIL FREIGHT TARIFF NAMING COMMODITY RATES ON TRAILERS AS DESCRIBED HEREIN BETWEEN DETROIT, MICHIGAN, AND CLEVELAND, OHIO

The rates named herein are subject to suspension at the close and restoration on the opening of navigation as provided on page No. 2.

Issued February 27, 1941. Effective March 1, 1941. Issued on one day's notice under authority of Rule 1 (c) of Tariff circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Mich.

Table of Contents

Subject	Page No.
Rates, Commodity	3
Rules governing Tariff.	
Application of Tariff	1 2
Discontinuance of Service	2
Diversion in Transit	2
Marine Insurance	2
Rates on Accessories or Attachments	2
Terminal Privileges	3
Storage	2
	2

RULES AND REGULATIONS

APPLICATION OF TARIFF

The rates named herein will apply from and to established points of receipt and delivery of the Automotive Trades Steamship Company.

DISCONTINUANCE AND RESTORATION OF SERVICE

The rates named in this tariff are effective only during the season of navigation of the Automotive Trades Steamship Company, which is from March 10th to December 12th.

TERMINAL AND OTHER PRIVILEGES

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by carrier or their agents, and of carriers or their agents beyond the lines, providing for diversion, reconsignment, storage or any

other previleges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper or consignee, which are lawfully on file with the Interstate Commerce Commission.

MARINE INSURANCE

Property (moving under rates named or provided for in this tariff), while in the custody of this Company, from the time this Company receives it from shipper or from prior connecting carrier on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers and land conveyances at ports of loading of their vessels and while it is waterborne on vessels at and between ports and while it is on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers, and land conveyances at port of discharge of vessels, until it is delivered to consignee (but not beyond the free time allowed for delivery as designated by tariffs lawfully on file with the Interstate Commerce Commission, nor while held by this Company as warehouseman) or until it is delivered to connecting carriers thereat, is insured:

While Waterborne, against the perils of the seas, rivers, lakes, bays, canals and other waters, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, explosion (howsoever or wheresoever occurring), bursting of boilers, breakage of shafts, latent defect in hull, machinery or appliances, faults or errors in the navigation or management of vessels by the master, mariners, mates, engineers or pilots, and all other like perils or misfortunes that have or shall come to the hurt, detriment, damage to or loss of the said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable.

While on Docks, Piers, Wharves, Bulkheads, Platforms, Transfers and Land Conveyances; or elsewhere on shore, against the risks of fire, lightning, explosion (howsoever or wheresoever occurring), ice, floods, the rising of navigable waters, cyclones, hurricanes, tornadoes, windstorms, transportation, the collapse and/or subsidence of docks, piers, wharves, bulkheads, platforms and/or of any buildings thereon.

Losses Payable within Thirty Days after proof of loss and proof of interest in said property have been furnished.

Applicable only to the Automotive Trades Steamship Company and to the property while in its custody; and the liability herein assumed is that of this Company only.

STORAGE CHARGES

Shipments transported under this tariff will be allowed (168 hours) seven days free time after the first seven A. M. after notice of arrival has been given in writing or as otherwise agreed, and will, after the expiration of the free time, be subject to a storage charge of ten cents per day or fraction thereof, per vehicle, minimum charge fifty cents per vehicle. At any time after the expiration of the (168 hours) seven day free time referred to above, the carrier reserves the right to forward such shipments to a public warehouse. Such shipment will be transported from the docks of the carrier to a public warehouse at the expense of the owner, and there held without liability on the part of the carrier, subject to lien for freight and other lawful charges, including a reasonable charge for storage.

RATES ON ACCESSORIES, ATTACHMENTS, OR ADVERTISING MATTER

The rates on vehicles as described in this tariff will include all accessories or attachments, including advertising matter, which will form part of the complete vehicle when attached to or placed inside of the vehicle of which they are a part. No charge will be made for the weight of the water or anti-freeze solution placed in the radiator or for the oil or gasoline which is necessary for operating the vehicle.

DIVERSION IN TRANSIT

Vehicles described herein, may be diverted or reconsigned and the rate in effect on date of shipment from point of origin to final destination will be protected, no charge being made for change of consignee or destination provided such diversion or reconsignment is effected while the property is in possession of this Company. Where shipments are reconsigned to destinations beyond the Port, rates lawfully on file with the Interstate Commerce Commission will be applied.

Item No. 10

Commodity Rates on Trailers, Camp and Trailers, Freight, Without Motor Power

[In cents per vehicle according to weight and over-all measurement]

Weight	Between Detroit, Michigan, and Cleveland, Ohio, When over-all measurements are:						
	20 feet and under	Over 20 feet to and including 22 feet	Over 22 feet to and including 24 feet	Over 24 feet to and including 26 feet	Over 26 feet to and including 28 feet	Over 28 feet to and including 30 feet	Over 30 feet
3,500 pounds or less	1,400	1,500	1,700	1,900	1,900	2,100	2,300
3,501 pounds to and including 4,000 pounds	1,450	1,650	1,850	2,050	2,250	2,450	2,650
4,001 pounds to and including 4,500 pounds	1,500	1,700	1,900	2,100	2,300	2,500	2,700
4,501 pounds to and including 6,000 pounds	1,650	1,850	2,050	2,250	2,450	2,650	2,850
6,001 pounds to and including 7,500 pounds	1,700	1,900	2,100	2,300	2,500	2,700	2,900
7,501 pounds to and including 7,500 pounds	1,800	2,000	2,200	2,400	2,600	2,800	3,000
Over 7,500 pounds	1,900	2,100	2,300	2,500	2,700	2,900	3,100

When an additional chassis is shipped loaded inside of body type trailers or mounted upon another chassis, an additional charge of fifty (50) percent of the rate applicable will be charged with a maximum rate of $40.00 for the two units so shipped.

415 I. C. C. No. 9

AUTOMOTIVE TRADES STEAMSHIP COMPANY

Tariff No. 9

LOCAL FREIGHT TARIFF NAMING COMMODITY RATES ON TRAILERS AS DESCRIBED HEREIN BETWEEN DETROIT, MICHIGAN, AND BUFFALO, NEW YORK

The rates named herein are subject to suspension at the close and restoration on the opening of navigation as provided on page No. 2.

Issued February 27, 1941. Effective March 1, 1941. Issued on one day's notice under authority of Rule 1 (c) of Tariff circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Mich.

APPLICATION OF TARIFF

The rates named herein will apply from and to established points of receipt and delivery of the Automotive Trades Steamship Company.

DISCONTINUANCE AND RESTORATION OF SERVICE

The rates named in this tariff are effective only during the season of navigation of the Automotive Trades Steamship Company, which is from April 29th to December 12th.

TERMINAL AND OTHER PRIVILEGES.

Except as otherwise provided herein, shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by carrier or their agents, providing for diversion, reconsignment, storage or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper or consignee, which are lawfully on file with the Interstate Commerce Commission.

STORAGE CHARGES

Shipments transported under this tariff will be allowed (168 hours) seven days free time after the first seven A. M. after notice of arrival has been given in writing or as otherwise agreed, and will, after the expiration of the free time, be subject to a storage charge of ten cents per day or fraction thereof, per vehicle, minimum charge fifty cents per vehicle. At any time after the expiration of the (168 hours) seven day free time referred to above, the carrier reserves the right to forward such shipments to a public warehouse. Such shipment will be transported from the docks of the carrier to a public warehouse at the expense of the owner, and there held without liability on the part of the carrier, subject to lien for freight and other lawful charges, including a reasonable charge for storage.

DIVERSION IN TRANSIT.

Vehicles described herein, may be diverted or reconsigned and the rate in effect on date of shipment from point of origin to final destination will be protected, no charge being made for change of consignee or destination provided such diversion or reconsignment is effected while the property is in possession of this Company. Where shipments are reconsigned to destinations beyond the Port, rates lawfully on file with the Interstate Commerce Commission will be applied.

MARINE INSURANCE

Property (moving under rates named or provided for in this tariff), while in the custody of this Company, from the time this Company receives it from shipper or from prior connecting carrier on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers and land conveyances at ports of loading of their vessels and while it is waterborne on vessels at and between ports and while it is on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers, and land conveyances at port of discharge of vessels, until it is delivered to consignee (but not beyond the free time allowed for delivery as designated by tariffs lawfully on file with the Interstate Commerce Commission, nor while held by this Company as warehouseman) or until it is delivered to connecting carriers thereat, is insured:

While Waterborne, against the perils of the seas, rivers, lakes, bays, canals and other waters, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, explosion (howsoever or wheresoever occurring), bursting of boilers, breakage of shafts, latent defects in hull, machinery or appliances, faults or errors in the navigation or management of vessels by the master, mariners, mates, engineers or pilots, and all other like perils or misfortunes, that have or shall come to the hurt, detriment, damage to or loss of the said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable.

While on Docks, Piers, Wharves, Bulkheads, Platforms, Transfers and Land Conveyances, or elsewhere on shore, against the risks of fire, lightning, explosion (howsoever or wheresoever occurring), ice, floods, the rising of navigable waters, cyclones, hurricanes, tornadoes, windstorms, transportation, the collapse and/or subsidence of docks, piers, wharves, bulkheads, platforms and/or of any buildings thereon.

Losses Payable within Thirty Days after proof of loss and proof of interest in said property have been furnished.

Applicable only to the Automotive Trades Steamship Company and to the property while in its custody; and the liability herein assumed is that of this Company only.

Item No. 10

Commodity Rates on Trailers, Cargo and Trailers, Freight, Without Motor Power

[In cents per vehicle according to weight]

Between Detroit, Michigan, and Buffalo, N. Y.	Rates
Weighing 3000 pounds or less	1700
Weighing over 3000 pounds to and including 3500 pounds	2000
Weighing over 3500 pounds to and including 4000 pounds	2200
Weighing over 4000 pounds to and including 4500 pounds	2400
Weighing over 4500 pounds to and including 5000 pounds	2600
Weighing over 5000 pounds to and including 5500 pounds	2800
Weighing over 5500 pounds to and including 6000 pounds	3000
Weighing over 6000 pounds to and including 6500 pounds	3200
Weighing over 6500 pounds to and including 7000 pounds	3400
Weighing over 7000 pounds to and including 7500 pounds	3600
Weighing over 7500 pounds to and including 8000 pounds	3800
Weighing over 8000 pounds to and including 8500 pounds	4000
Weighing over 8500 pounds	4200

Item No. 15

RATES ON ACCESSORIES, ATTACHMENTS, OR ADVERTISING MATTER

The rates on vehicles as described in this tariff will include all accessories or attachments, including advertising matter, which will form part of the complete vehicle when attached to or placed inside of the vehicle of which they are a part. No charge will be made for the weight of the water or anti-freeze solution placed in the radiator or for the oil or gasoline which is necessary for operating the vehicle.

416 Supplement No. 1 to I. C. C. No. 9; Supplement No. 1 contains all changes

AUTOMOTIVE TRADES STEAMSHIP COMPANY

Supplement No. 1 to Tariff No. 9

LOCAL FREIGHT TARIFF NAMING COMMODITY RATES ON TRAILERS (AS DESCRIBED HEREIN) BETWEEN DETROIT, MICHIGAN, AND BUFFALO, NEW YORK

The rates named herein are subject to suspension at the close and restoration on the opening of navigation as provided on page No. 2.

Issued March 31, 1941. Effective April 30, 1941. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Mich.

♦♦ Item No. 10-A.
Cancels Item No. 10.

Commodity Rates on Trailers, Camp and Trailers, Freight, Without Motor Power

(In cents per vehicle according to weight and over-all measurement)

Weight	Between Detroit, Michigan, and Buffalo, N. Y., when over-all measurements are						
	20 feet and under	Over 20 feet to and including 22 feet	Over 22 feet to and including 24 feet	Over 24 feet to and including 26 feet	Over 26 feet to and including 28 feet	Over 28 feet to and including 30 feet	Over 30 feet
3,500 pounds or less	1700	1800	2000	2200	2400	2600	3000
3,501 pounds to and including 4,000 pounds	1800	2000	2200	2400	2600	2800	3200
4,001 pounds to and including 4,500 pounds	1900	2200	2400	2600	2800	3000	3400
4,501 pounds to and including 5,000 pounds	2000	2300	2500	2700	2900	3100	3500
5,001 pounds to and including 5,500 pounds	2100	2400	2600	2800	3000	3200	3600
5,501 pounds to and including 6,000 pounds	2200	2500	2700	2900	3100	3300	3700
6,001 pounds to and including 6,500 pounds	2300	2600	2800	3000	3200	3400	3800
6,501 pounds to and including 7,000 pounds	2400	2700	2900	3100	3300	3500	3900
7,001 pounds to and including 7,500 pounds	2500	2800	3000	3200	3400	3600	4000
Over 7,500 pounds	2600	2900	3100	3300	3500	3700	4100

(1) When an additional chassis is shipped loaded inside of trailer type of trailers or mounted upon another chassis, as a optional charge of fifty (50) percent of the rate applicable will be charged with a minimum rate of $20.00 for the two units so shipped.

♦Reduction.
♦Increase.

417

Exhibit No. 29

I. C. C. No. 12

T. J. McCARTHY STEAMSHIP COMPANY

Local Commodity Freight Tariff No. 1, Applying on Automobiles, Passenger; Chassis; Commercial; Chassis, Freight Automobile; Chassis, Passenger Automobile; Hearses, Automobile; Trailers, Motor Vehicle; Trucks, Panel or Commercial Delivery; Trucks, Motor Vehicle, Set up, on Wheels, from Buffalo, New York and Cleveland, Ohio to Cleveland, Ohio and Buffalo, New York.

RULES AND REGULATIONS

Marine Insurance

Property (moving under rates named or provided for in this tariff), while in the custody of this Company, from the time this Company receives it from shipper or from prior connecting car-

rier on docks, piers, wharves, bulkheads, platforms, lighters, and/or craft, transfers, and land conveyances at ports of loading of their vessels and while it is water-borne on vessels at and between ports and while it is on docks, piers, wharves, bulkheads, platforms, lighters, and/or craft, transfers, and land conveyances at port of discharge of vessels, until it is delivered to consignee (but not beyond the free time allowed for delivery as designated by tariff lawfully on file with the Interstate Commerce Commission, nor while held by this Company as warehouseman) or until it is delivered to connecting carriers thereat, is insured:

While Water-borne, against the perils of the sea, rivers, lakes, bays, canals, and other waters, fire, collision, stranding, jettisons, pirates, assailing thieves; barratry of the master or mariners, explosion (howsoever or wheresoever occurring), bursting of boilers, breakage of shafts, latent defect in hull, machinery, or appliances, faults, or errors in the navigation or management of vessels by the master, mariners, mates, engineers or pilots, and all other like perils or misfortunes, that have or shall come to the hurt, detriment, damage to or loss of the said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable.

While on Docks, Piers, Wharves, Bulkheads, Platforms, Transfers, and Land Conveyances, or elsewhere on shore, against the risks of fire, lightning, explosion (howsoever or wheresoever occurring), ice, floods, the rising of navigable waters, cyclones, hurricanes, tornadoes, windstorms, transportation, the collapse, and/or subsidence of docks, piers, wharves, bulkheads, platforms, and/or of any buildings thereon.

Issued February 27, 1941. Effective March 1, 1941. Issued on one day's notice under authority of Rule 1 (c) of Tariff circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Michigan.

Losses payable within Thirty Days after proof of loss and proof of interest in said property have been furnished.

Applicable only to the T. J. McCarthy Steamship Company and to the property while in its custody; and the liability herein assumed is that of this company only.

Special Charges and Allowances

Shipments transported under this tariff will be allowed (168 hours) seven days free time after the first seven A. M. after notice of arrival has been given in writing or as otherwise agreed, and will, after the expiration of the free time, be subject to a storage charge of ten cents per day or fraction thereof, per vehicle,

minimum charge fifty cents per vehicle. At any time after the expiration of the (168 hours) seven-day free time referred to above, the carrier reserves the right to forward such shipments to a public warehouse. Such shipments will be transported from the docks of the carrier to a public warehouse at the expense of the owner, and there held without liability on the part of the carrier, subject to lien for freight and other lawful charges, including a reasonable charge for storage.

Suspension and Restoration of Rates

The rates named in this tariff are effective only during the season of navigation of the T. J. McCarthy Steamship Company, which is from March 10th to December 12th.

Rates

[Rates in dollars and cents per vehicle]

FROM BUFFALO, NEW YORK, TO CLEVELAND, OHIO

Over all measurement:	Rates
Cars 14 feet 6 inches and under	$6.50
Cars over 14 feet 6 inches	7.00

FROM CLEVELAND, OHIO, TO BUFFALO, NEW YORK

Over all measurement:	Rates
Cars 14 feet 6 inches and under	$6.50
Cars over 14 feet 6 inches to and including 15 feet	7.00
Cars over 15 feet to and including 17 feet	8.00
Cars over 17 feet to and including 17 feet 6 inches	8.50
Cars over 17 feet 6 inches to and including 19 feet	9.00
For each additional 6 inches or fraction thereof over 19 feet add 50 cents.	

418 I. C. C. No. 2

T. J. McCarthy Steamship Company

Local Commodity Freight Tariff No. 2, Applying on Automobiles, Passenger; Chassis, Commercial; Chassis, Freight Automobile; Chassis, Passenger Automobile; Hearses, Automobile; Trailers, Motor Vehicle; Trucks, Panel or Commercial Delivery; Trucks, Motor Vehicle, Set up, on Wheels, Between Detroit, Mich. and Erie, Pa.

RULES AND REGULATIONS

Marine Insurance

Property (moving under rates named or provided for in this tariff), while in the custody of this Company, from the time this Company receives it from shipper or from prior connecting car-

rier on docks, piers, wharves, bulkheads, platforms, lighters, and/or craft, transfers, and land conveyances at ports of loading of their vessels and while it is water-borne on vessels at and between ports and while it is on docks, piers, wharves, bulkheads, platforms, lighters, and/or craft, transfers, and land conveyances at port of discharge of vessels, until it is delivered to consignee (but not beyond the free time allowed for delivery as designated by tariff lawfully on file with the Interstate Commerce Commission, nor while held by this Company as warehouseman) or until it is delivered to connecting carriers thereat, is insured:

While Water-borne, against the perils of the seas, rivers, lakes, bays, canals and other waters, fire collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, explosion (howsoever or wheresoever occurring), bursting of boilers, breakage of shafts, latent defect in hull, machinery or appliances, faults or errors in the navigation or management of vessels by the master, mariners, mates, engineers or pilots, and all other like perils or misfortunes, that have or shall come to the hurt, detriment, damage to or loss of the said property or any part thereof, including general average charges and expenses for which the owner may under maritime law be chargeable.

While on Docks, Piers, Wharves, Bulkheads, Platforms, Transfers and Land Conveyances, or elsewhere on shore, against the risks of fire, lightning, explosion (howsoever or wheresoever occurring), ice, floods, the rising of navigable waters, cyclones, hurricanes, tornadoes, windstorms, transportation, the collapse, and/or subsidence of docks, piers, wharves, bulkheads, platforms, and/or of any buildings thereon.

Issued February 27, 1941. Effective March 1, 1941. Issued on one day's notice under authority of Rule 1 (c) of Tariff Circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Michigan.

Losses Payable within Thirty Days after proof of loss and proof of interest in said property have been furnished.

Applicable only to the T. J. McCarthy Steamship Company and to the property while in its custody; and the liability herein assumed is that of this Company only.

Special Charges and Allowances

Shipments transported under this tariff will be allowed (168 hours) seven days free time after the first seven A. M. after notice of arrival has been given in writing or as otherwise agreed, and will, after the expiration of the free time, be subject to a storage charge of ten cents per day or fraction thereof, per vehicle, minimum charge fifty cents per vehicle. At any time after

the expiration of the (168 hours) seven days free time referred to above, the carrier reserves the right to forward such shipments to a public warehouse. Such shipment will be transported from the docks of the carrier to a public warehouse at the expense of the owner, and there held without liability on the part of the carrier, subject to lien for freight and other lawful charges, including a reasonable charge for storage.

Suspension and Restoration of Rates

The rates named in this tariff are effective only during the season of navigation of the T. J. McCarthy Steamship Company, which is from March 10th to December 12th.

Rates between Detroit, Mich., and Erie, Pa.

[Rates in dollars and cents per automobile]

Overall measurement:	Rates
Cars 13 feet and under	$9.50
Cars over 13 feet to and including 13 feet 6 inches	10.00
Cars over 13 feet 6 inches to and including 14 feet	10.50
Cars over 14 feet to and including 14 feet 6 inches	11.00
Cars over 14 feet 6 inches to and including 15 feet	11.50
Cars over 15 feet to and including 15 feet 6 inches	12.00
Cars over 15 feet 6 inches to and including 16 feet	12.50
Cars over 16 feet to and including 16 feet 6 inches	13.00
Cars over 16 feet 6 inches to and including 17 feet	13.50
Cars over 17 feet to and including 17 feet 6 inches	14.00
Cars over 17 feet 6 inches to and including 18 feet	14.50
Cars over 18 feet add 50 cents for each additional 6 inches or fraction thereof.	

419. I. C. C. No. 3

T. J. McCARTHY STEAMSHIP COMPANY

Local Freight Tariff No. 3 Naming Wharfage Allowance for Detroit, Michigan River District

DETROIT, MICHIGAN RIVER DISTRICT

Beginning at Connors Creek on the American side of the Detroit River on the East, thence West and South along the American Side of the Detroit River to and including the Ecorse River, and all navigable waters within the above boundaries.

WHARFAGE ALLOWANCE

When the T. J. McCarthy Steamship Company uses a privately owned dock of an automobile manufacturer for the loading of their motor vehicles for transportation beyond the port, an allowance of fifty (50¢) cents per vehicle will be made out of the current

Detroit, Michigan rate to the owner of the dock so used for the loading and dockage facilities furnished. This allowance only applies on vehicles in lots of fifty (50) or more.

Issued February 27, 1941. Effective March 1, 1941. Issued on one days notice under authority of Rule 1. (c) of Tariff Circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Michigan.

420 I.C.C. No. 4

T. J. McCarthy Steamship Company

Freight Tariff No. 4, Naming Rules Governing Storage, Reconsignment, and Other Transit Privileges on Motor Vehicles in Public Warehouses at Buffalo, N. Y.

Issued February 27, 1941. Effective March 1, 1941. Issued on one day's notice under authority of Rule 1. (c) of Tariff Circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Michigan.

RULES GOVERNING STORAGE, RECONSIGNMENT AND OTHER TRANSIT PRIVILEGES ON MOTOR VEHICLES IN PUBLIC WAREHOUSES AT BUFFALO, N. Y.

Motor Vehicles, arriving at Buffalo, N. Y., via the T. J. McCarthy Steamship Company and stored in Public Warehouses located within the Corporate Limits of Buffalo, N. Y., by order of shippers or consignees will be subject to the following rules:

1. Shippers or consignees must make arrangements for storage with the Public Warehouse concerned.

2. This Company will not assume any of the expense of transferring the motor vehicles from its automobile yard at Buffalo, N. Y., to the public warehouse concerned.

3. While such motor vehicles are stored in transit in the public warehouse under these rules, the custody and possession of same, as between the T. J. McCarthy Steamship Company and the shipper, consignee, or owner, shall be that of the shipper, consignee, or owner.

4. Shipments stored in transit under these rules may be reconsigned to points beyond Buffalo, N. Y., at the through rates in effect at time of shipment from point of origin to final destination but this Company will not assume any of the expense of delivering the shipments from the public warehouse to the outbound carrier.

5. Shipments will be subject to local rates from point of origin to Buffalo, N. Y., pending reconsignment, and charges, if not prepaid, will be collected by the T. J. McCarthy Steamship Company at such rates.

6. While the Motor Vehicles are in storage in the public warehouse they may be cleaned, polished, serviced, and or washed, in line with arrangements made by shipper or consignee with the public warehouse concerned.

7. The period of time allowed for the protection of the through rate on shipments stored in transit under these rules will be ninety (90) days from the date such shipments are taken from this Company's possession for storage in the public warehouse. As to any shipments on which the time limit as above described, has expired, the transit privilege shall absolutely cease and the local rate to Buffalo, N. Y., in effect at the time of shipment from point of origin, will be assessed.

8. When the motor vehicles are shipped from Buffalo, N. Y. under transit rate, shipper will be required to present to the outbound carrier the inbound carrier's legally representative freight bills (see Rule 19) and shipping directions bearing or accompanied by shipper's certificate as shown below and such inbound freight bill which has been recorded for transit, shall be immediately cancelled by inscription to that effect thereon.

421 SHIPPER'S CERTIFICATE

Tender is hereby made to the _____ (outbound carrier) of _____ (inbound carrier) freight bills, as listed herein, for the purpose of securing reshipping privilege and transit rate on the motor vehicles covered thereby and which _____ further declare to be the freight bill _____ representative of the property offered for release or reconsignment, consisting of the following in-bound shipments: _____

_____

_____

_____

This tender is made with a guarantee on _____ part that such privilege may be granted in conformity with the rules of said carrier as published in _____ Tariff I. C. C. No. _____ supplements thereto and subsequent issues thereof, which have been read and with which _____ familiar.

_____

Signature of Shipper

The carrier transporting the motor vehicles from Buffalo shall furnish the T. J. McCarthy Steamship Company with a copy of its outbound billing or similar document as evidence of furtherance of the shipments.

9. The T. J. McCarthy Steamship Company shall have access at all times to the transit house and records to check up all shipments therein and the freight bills on hand.

10. The privileges at Buffalo, N. Y. referred to in these rules will be accorded only to parties who comply with the rules provided herein, who will keep records and make reports in a manner satisfactory to the T. J. McCarthy Steamship Company, and who will make affidavit when required, as to accuracy of all records and information furnished by them, to the T. J. McCarthy Steamship Company.

Transit privileges will be accorded only when tariff under which transit rate is applied permits application of such privileges on motor vehicles moving under such tariff.

11. These arrangements will not apply on motor vehicles which cannot be operated under their own power.

12. The arrangements provided herein will be policed by representatives of the T. J. McCarthy Steamship Company.

422 I. C. C. No. 5

T. J. McCARTHY STEAMSHIP COMPANY

Tariff No. 5

LOCAL AND PROPORTIONAL FREIGHT TARIFF NAMING COMMODITY RATES ON AUTOMOBILES, PASSENGER; CHASSIS, COMMERCIAL AUTOMOBILE; CHASSIS, FREIGHT, AUTOMOBILE; CHASSIS, PASSENGER AUTOMOBILE; HEARSES, AUTOMOBILE; TRACTORS, VEHICLE; TRUCKS, PANEL OR COMMERCIAL DELIVERY; TRUCKS, MOTOR VEHICLE, AS DESCRIBED HEREIN BETWEEN DETROIT, MICHIGAN, AND CLEVELAND, OHIO, AS SHOWN HEREIN

The rates named herein are subject to suspension at the close and restoration on the opening of navigation as provided on page No. 2.

Issued February 27, 1941. Effective March 1, 1941. Issued on one day's notice under authority of Rule 1 (c) of Tariff Circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Michigan.

Table of Contents

Subject	Page No.
Rates, Commodity	8
Rules governing Tariff	
Discontinuance of Service	
Diversion in Transit	
Marine Insurance	
Rates on Accessories or Attachments	
Terminal Privileges	
Storage	

Index to commodities

Article	Item No.	Article	Item No.
Automobiles, passenger	20	Tractors, vehicle	20
Chassis, commercial automobile	20	Trucks, panel or commercial delivery	20
Chassis, freight automobile	20	Trucks, motor vehicle	20
Chassis, passenger automobile	20		
Engines, automobile	20		

Rules and Regulations

DISCONTINUANCE AND RESTORATION OF SERVICE

The rates named in this tariff are effective only during the season of navigation of the T. J. McCarthy Steamship Company, which is from March 10th to December 12th.

TERMINAL AND OTHER PRIVILIGES

Shipments transported under this tariff are entitled to such privileges and subject to such changes as are or shall be published by carrier or their agents, and of carriers or their agents beyond the lines, providing for diversion, reconsignment, storage or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper or consignee, which are lawfully on file with the Interstate Commerce Commission.

MARINE INSURANCE

Property (moving under rates named or provided for in this tariff), while in the custody of this Company, from the time this Company receives it from shipper or from prior connecting carrier on docks, piers, wharves, bulkheads, platforms, lighters and or craft, transfers and land conveyances at ports of loading of their vessels and while it is waterborne on vessels at and between ports and while it is on docks, piers, wharves, bulkheads, platforms, lighters and or craft, transfers, and land conveyances at port of discharge of vessels, until it is delivered to consignee (but not beyond the free time allowed for delivery as designated by tariffs lawfully on file with the Interstate Commerce Commission, nor while held by this Company as warehouseman) or until it is delivered to connecting carriers thereat, is insured:

While Waterborne against the perils of the seas, rivers, lakes, bays, canals and other waters, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, explosion (howsoever or wheresoever occurring), bursting of boilers, breakage of shafts, latent defect in hull, machinery or appliances,

faults or errors in the navigation or management of vessels by the master, mariners, mates, engineers or pilots, and all other like perils or misfortunes, that have or shall come to the hurt, detriment, damage to or loss of the said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable.

While on Docks, Piers, Wharves, Bulkheads, Platforms, Transfers and Land Conveyances, or elsewhere on shore, against the risks of fire, lightning, explosion (however or wheresoever occurring), ice, floods, the rising of navigable waters, cyclones, hurricanes, tornadoes, windstorms, transportation, the collapse and or subsidence of docks, piers, wharves, bulkheads, platforms and or of any buildings thereon.

Losses Payable within Thirty Days after proof of loss and proof of interest in said property have been furnished.

Applicable only to the T. J. McCarthy Steamship Company and to the property while in its custody; and the liability herein assumed is that of this Company only.

STORAGE CHARGES

Shipments transported under this tariff will be allowed (168 hours) seven days free time after the first seven A. M. after notice of arrival has been given in writing or as otherwise agreed, and will, after the expiration of the free time be subject to a storage charge of ten cents per day or fraction thereof, per vehicle, minimum charge fifty cents per vehicle. At any time after the expiration of the (168 hours) seven day free time referred to above, the carrier reserves the right to forward such shipments to a public warehouse. Such shipment will be transported from the docks of the carrier to a public warehouse at the expense of the owner, and there held without liability on the part of the carrier, subject to lien for freight and other lawful charges, including a reasonable charge for storage.

RATES ON ACCESSORIES, ATTACHMENTS, OR ADVERTISING MATTER

The rates on vehicles as described in this tariff will include all accessories or attachments, including advertising matter, which will form part of the complete vehicle when attached to or placed inside of the vehicle of which they are a part. No charge will be made for the weight of the water or antifreeze solution placed in the radiator or for the oil or gasoline which is necessary for operating the vehicle.

DIVERSION IN TRANSIT

Vehicles described herein may be diverted or reconsigned and the rate in effect on date of shipment from point of origin to final destination will be protected, no charge being made for change of consignee or destination provided such diversion or reconsignment is effected while the property is in possession of this Company.

Item 20

Local Commodity Rates on Automobiles, Passenger; Chassis, Commercial Automobile; Chassis, Freight Automobile; Chassis, Passenger Automobile; Hearses, Automobile; Tractors, Vehicle; Trucks, Panel or Commercial Delivery; Trucks, Motor Vehicle, Between Detroit, Michigan, and Cleveland, Ohio

[Rates in dollars and cents per vehicle]

Overall measurement:	Rates
Cars 15 feet and under	$6.00
Cars over 15 feet 10 and including 15 feet 6 inches	6.50
Cars over 15 feet 6 inches to and including 16 feet	7.00
Cars over 16 feet to and including 16 feet 6 inches	7.50
Cars over 16 feet 6 inches to and including 17 feet	8.00

For each additional 6 inches or fraction thereof over 17 feet add 50 cents.

I. C. C. No. 6

T. J. McCARTHY STEAMSHIP COMPANY

Tariff No. 6

Local Freight Tariff Naming Commodity Rates on Automobiles, Passenger; Chassis, Commercial; Chassis, Freight Automobile; Chassis, Passenger Automobile; Hearses, Automobile; Tractors, Vehicle; Trucks, Panel or Commercial Delivery; Trucks, Motor Vehicle, as described herein between Detroit, Mich., and Buffalo, N. Y.

The rates named herein are subject to suspension at the close and restoration on the opening of navigation as provided on page No. 2.

Issued February 27, 1941. Effective March 1, 1941. Issued on one day's notice under authority of Rule 1 (c) of Tariff circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 219 Wayne Street, Detroit, Mich.

APPLICATION OF TARIFF

The rates named herein will apply from and to established points of receipt and delivery of the T. J. McCarthy Steamship Company.

DISCONTINUANCE AND RESTORATION OF SERVICE

The rates named in this tariff are effective only during the season of navigation of the T. J. McCarthy Steamship Company, which is from March 10th to December 12th.

TERMINAL AND OTHER PRIVILEGES

Except as otherwise provided herein, shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by carrier or their agents, providing for diversion, reconsignment, storage or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper or consignee, which are lawfully on file with the Interstate Commerce Commission.

MARINE INSURANCE

Property (moving under rates named or provided for in this tariff), while in the custody of this Company, from the time this Company receives it from shipper or from prior connecting carriers on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers and land conveyances at ports of loading of their vessels and while it is waterborne on vessels at and between ports and while it is on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers and land conveyances at port of discharge of vessels, until it is delivered to consignee (but not beyond the free time allowed for delivery as designated by tariffs lawfully on file with the Interstate Commerce Commission, nor while held by this Company as warehouseman) or until it is delivered to connecting carriers thereat, is insured:

While Waterborne, against the perils of the seas, rivers, lakes, bays, canals and other waters, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, explosion (howsoever or wheresoever occurring), bursting of boilers, breakage of shafts, latent defect in hull, machinery or appliances, faults or errors in the navigation or management of vessels by the master, mariners, mates, engineers or pilots, and all other like perils or misfortunes, that have or shall come to the hurt, detriment, damage to or loss of the said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable.

While on Docks, Piers, Wharves, Bulkheads, Platforms, Transfers and Land Conveyances, or elsewhere on shore, against the

risks of fire, lightning, explosion (howsoever or wheresoever occurring), ice, floods, the rising of navigable waters, cyclones, hurricanes, tornadoes, windstorms, transportation, the collapse and or subsidence of docks, piers, wharves, bulkheads, platforms and or of any buildings thereon.

Losses Payable within Thirty Days after proof of loss and proof of interest in said property have been furnished.

Applicable only to the T. J. McCarthy Steamship Company and to the property while in its custody; and the liability herein assumed is that of this Company only.

RATES ON ACCESSORIES, ATTACHMENTS, OR ADVERTISING MATTER.

The rates on vehicles as described in this tariff will include all accessories or attachments, including advertising matter, which will form part of the complete vehicle when attached to or placed inside of the vehicle of which they are a part. No charge will be made for the weight of the water or anti-freeze solution placed in the radiator or for the oil or gasoline which is necessary for operating the vehicle.

STORAGE CHARGES.

Shipments transported under this tariff will be allowed (168 hours) seven days free time after the first seven A. M. after notice of arrival has been given in writing or as otherwise agreed, and will, after the expiration of the free time, be subject to a storage charge of ten cents per day or fraction thereof, per vehicle, minimum charge fifty cents per vehicle. At any time after the expiration of the (168 hours) seven day free time referred to above, the carrier reserves the right to forward such shipments to a public warehouse. Such shipment will be transported from the docks of the carrier to a public warehouse at the expense of the owner, and there held without liability on the part of the carrier, subject to lien for freight and other lawful charges, including a reasonable charge for storage.

DIVERSION IN TRANSIT.

Vehicles described herein, may be diverted or reconsigned and the rate in effect on date of shipment from point of origin to final destination will be protected, no charge being made for change of consignee or destination provided such diversion or reconsignment is effected while the property is in possession of this Company. Where shipments are reconsigned to destinations beyond the Port, rates lawfully on file with the Interstate Commerce Commission will be applied.

421 Item No. 10

Commodity Rates on Automobiles, Passenger; Chassis, Commercial; Chassis, Freight Automobile; Chassis, Passenger Automobile; Hearses, Automobile; Tractors, Vehicle; Trucks, Patrol or Commercial Delivery; Trucks, Motor Vehicle, Set up, on Wheels.

[In dollars and cents per vehicle according to weight]

Between Detroit, Michigan, and Buffalo, N. Y.:

	Rates
Vehicles weighing 3100 pounds or less	$14.50
Over 3100 to 3400 pounds	16.00
Over 3400 to 3700 pounds	17.50
Over 3700 to 4000 pounds	19.00
Over 4000 to 4500 pounds	20.25
Over 4500 pounds	21.75

425 I. C. C. No. 7

T. J. McCarthy Steamship Company

Tariff No. 7

Local and Joint Freight Tariff Naming Commodity Rates on Automobiles, Passenger; Busses, Passenger; Chassis, Automobile; Hearses, Automobile; Tractors, Vehicle; Trailers, Motor Vehicle; Trailers, Tractor; Trucks, Motor Vehicle, Between Detroit, Mich., and Duluth, Minn.

The rates named herein are subject to suspension at the close and restoration on the opening of navigation as provided on page No. 2.

Rates Named Herein Include Marine Insurance

Issued February 27, 1941. Effective March 1, 1941. Issued on one day's notice under authority of Rule 1-(c), of Tariff circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Mich.

APPLICATION OF RATES

Rates named in this tariff, or as same may be amended, will apply from lake lines docks at point of origin to the receiving room, warehouse, storage yard or other place controlled by the consignee at billed destination or to a connecting carrier at point of interchange.

Rules and Regulations

Discontinuance and Restoration of Service

The rates named in this tariff are effective only during the season of navigation of the T. J. McCarthy Steamship Company, which is from March 20th to November 1st.

Terminal and Other Privileges

Except as otherwise provided herein, shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by carrier or their agents, providing for diversion, reconsignment, storage or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper or consignee, which are lawfully on file with the Interstate Commerce Commission.

Storage Charges

Shipments transported under this tariff will be allowed (168 hours) seven days free time after the first seven A. M. after notice of arrival has been given in writing or as otherwise agreed, and will; after the expiration of the free time, be subject to a storage charge of ten cents per day or fraction thereof, per vehicle, minimum charge fifty cents per vehicle. At any time after the expiration of the (168 hours) seven day free time referred to above, the carrier reserves the right to forward such shipments to a public warehouse. Such shipment will be transported from the docks of the carrier to a public warehouse at the expense of the owner, and there held without liability on the part of the carrier, subject to lien for freight and other lawful charges, including a reasonable charge for storage.

Marine Insurance

Property (moving under rates named or provided for in this tariff), while in the custody of this Company, from the time this Company receives it from shipper or from prior connecting carrier on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers and land conveyances at ports of loading

of their vessels and while it is waterborne on vessels at and between ports and while it is on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers, and land conveyances at port of discharge of vessels, until it is delivered to consignee (but not beyond the free time allowed for delivery as designated by tariffs lawfully on file with the Interstate Commerce Commission, nor while held by this Company as warehouseman) or until it is delivered to connecting carriers thereat, is insured:

While Waterborne, against the perils of the seas, rivers, lakes, bays, canals and other waters, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, explosion (howsoever or wheresoever occurring), bursting of boilers, breakage of shafts, latent defect in hull, machinery or appliances, faults or errors in the navigation or management of vessels by the master, mariners, mates, engineers or pilots, and all other like perils or misfortunes, that have or shall come to the hurt, detriment, damage to or loss of the said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable.

While on Docks, Piers, Wharves, Bulkheads, Platforms, Transfers and Land Conveyances, or elsewhere on shore, against the risks of fire, lightning, explosion (howsoever or wheresoever occurring), ice, floods, the rising of navigable waters, cyclones, hurricanes, tornadoes, windstorms, transportation, the collapse and/or subsidence of docks, piers, wharves, bulkheads, platforms and/or of any buildings thereon.

Losses Payable within Thirty Days after proof of loss and proof of interest in said property have been furnished.

Applicable only to the T. J. McCarthy Steamship Company and to the property while in its custody; and the liability herein assumed is that of this Company only.

Item No.	Commodity	Between Detroit, Mich. and Duluth, Minn., rates in dollars and cents per vehicle
	Automobiles, Passenger, Buses, Passenger, Chassis, Passenger Automobile, Chassis, Freight Automobile Hearses, Automobile Trucks, Motor Vehicle, Trailers, Freight Trailers, Passengers, Trailers, Tractor Trucks, Motor Vehicle.	
	Overall Measurement:	
	14 feet and under	$21.00
	Over 14 feet to and including 14 feet 6 inches	21.50
	Over 14 feet 6 inches to and including 15 feet	22.00
1	Over 15 feet to and including 15 feet 6 inches	22.50
	Over 15 feet 6 inches to and including 16 feet	23.00
	Over 16 feet to and including 16 feet 6 inches	24.50
	Over 16 feet 6 inches to and including 17 feet	24.00
	Over 17 feet to and including 17 feet 6 inches	24.50
5	Over 17 feet 6 inches to and including 18 feet	25.50
	Over 18 feet to and including 18 feet 6 inches	26.50
	Over 18 feet 6 inches to and including 19 feet	27.50
	Over 19 feet to and including 19 feet 6 inches	28.50
	Over 19 feet 6 inches to and including 20 feet	29.50
	Over 20 feet to and including 20 feet 6 inches	30.50
	Over 20 feet 6 inches to and including 21 feet	31.50
	Over 21 feet to and including 21 feet 6 inches	32.50
	Over 21 feet 6 inches to and including 22 feet	33.50
	Over 22 feet to and including 22 feet 6 inches	34.50
	Over 22 feet 6 inches to and including 23 feet	35.50
	Over 23 feet to and including 23 feet 6 inches	37.50
	Add $1.00 for each additional 12 inches or fraction thereof over 23 feet 6 inches.	
	NOTE.—For rates on Vehicles (not Busses or Trailers), subsequently shipped from Duluth, Minn., via common carrier to Minneapolis, Minnesota Transfer or St. Paul, Minn., see Item 10.	
	Automobiles, Passenger, Chassis, Passenger Automobile, Chassis, Freight Automobile, Hearses, Automobile Tractors, Vehicle: Trucks, Motor Vehicle	
	Wheelbase Measurement:	
	Under 120 inches	16.80
	120 inches to but not including 144 inches	22.80
	144 inches to but not including 160 inches	26.00
	160 inches to but not including 176 inches	32.40
10	176 inches and over	38.00
	NOTE.—Rates, as named in this item, will only apply on vehicles, as described above, when subsequently shipped from Duluth, Minn., via common carrier, to Minneapolis, Minnesota Transfer and St. Paul, Minn. Upon presentation of paid freight expense bill showing that such vehicles, as described above, subsequently have been shipped from Duluth, Minn., to Minneapolis, Minnesota Transfer or St. Paul, Minn., via common carrier, adjustment will be made based upon the difference between the charges under the rates named in this item and the rates named in Item No. 5.	
	RATES ON ACCESSORIES, ATTACHMENTS, OR ADVERTISING MATTER.	
15	The rates on vehicles as described in this tariff will include all accessories or attachments, including advertising matter, which will form part of the complete vehicle when attached to or placed beside of the vehicle of which they are a part. No charge will be made for the weight of the water of antifreeze solution placed in the radiator or for the oil or gasoline which is necessary for operating the vehicle.	

T. J. McCarthy Steamship Company

Tariff No. 8

LOCAL FREIGHT TARIFF NAMING COMMODITY RATES ON TRAILERS (AS DESCRIBED HEREIN) BETWEEN DETROIT, MICHIGAN AND CLEVELAND, OHIO

The rates named herein are subject to suspension at the close and restoration on the opening of navigation as provided on page No. 2.

Issued February 27, 1941. Effective March 1, 1941. Issued on one day's notice under authority of Rule 1 (c) of Tariff circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Mich.

Table of contents

Subject	Page No.
Rates, Commodity	3
Rules governing Tariff:	
Application of Tariff	2
Discontinuance of Service	2
Diversion in Transit	3
Marine Insurance	2
Rates on Accessories or Attachments	3
Terminal Privileges	2
Storage	2

Rules and Regulations

APPLICATION OF TARIFF

The rates named herein will apply from and to established points of receipt and delivery of the T. J. McCarthy Steamship Company.

DISCONTINUANCE AND RESTORATION OF SERVICE

The rates named in this tariff are effective only during the season of navigation of the T. J. McCarthy Steamship Company, which is from March 10th to December 12th.

TERMINAL AND OTHER PRIVILEGES

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by carrier or their agents, and of carriers or their agents beyond the lines, providing for diversion, reconsignment, storage or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper or consignee, which are lawfully on file with the Interstate Commerce Commission.

MARINE INSURANCE

Property (moving under rates named or provided for in this tariff), while in the custody of this Company, from the time this Company receives it from shipper or from prior connecting carrier on docks, piers, wharves, bulkheads, platforms, lighters and/or craft, transfers and land conveyances at ports of loading of their vessels and while it is waterborne on vessels at and between ports and while it is on docks, piers, wharves, bulkheads, platforms, lighters, and/or craft, transfers, and land conveyances at port of discharge of vessels, until it is delivered to consignee (but not beyond the free time allowed for delivery as designated by tariffs lawfully on file with the Interstate Commerce Commission, nor while held by this Company as warehouseman) or until it is delivered to connecting carriers thereat, is insured:

While Waterborne, against the perils of the seas, rivers, lakes, bays, canals and other waters, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, explosion (howsoever or wheresoever occurring), bursting of boilers, breakage of shafts, latent defect in hull, machinery or appliances, faults or errors in the navigation or management of vessels by the master, mariners, mates, engineers or pilots, and all other like perils or misfortunes, that have or shall come to the hurt, detriment, damage to or loss of the said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable.

While on Docks, Piers, Wharves, Bulkheads, Platforms, Transfers, and Land Conveyances, or elsewhere on shore, against the risks of fire, lightning, explosion (howsoever or wheresoever occurring), ice, floods, the rising of navigable waters, cyclones, hurricanes, tornadoes, windstorms, transportation, the collapse and/or subsidence of docks, piers, wharves, bulkheads, platforms and/or of any buildings thereon.

Losses Payable within Thirty Days after proof of loss and proof of interest in said property have been furnished.

Applicable only to the T. J. McCarthy Steamship Company and to the property while in its custody; and the liability herein assumed is that of this Company only.

STORAGE CHARGES

Shipments transported under this tariff will be allowed (168 hours) seven days free time after the first seven A. M. after notice of arrival has been given in writing or as otherwise agreed, and will, after the expiration of the free time, be subject to a storage charge of ten cents per day or fraction thereof, per vehicle, minimum charge fifty cents per vehicle. At any time after the ex-

piration of the (168 hours) seven day free time referred to above, the carrier reserves the right to forward such shipments to a public warehouse. Such shipment will be transported from the docks of the carrier to a public warehouse at the expense of the owner, and there held without liability on the part of the carrier, subject to lien for freight and other lawful charges, including a reasonable charge for storage.

428 RATES OF ACCESSORIES, ATTACHMENTS, OR ADVERTISING MATTER

The rates on vehicles as described in this tariff will include all accessories or attachments, including advertising matter, which will form part of the complete vehicle when attached to or placed inside of the vehicle of which they are a part. No charge will be made for the weight of the water or anti-freeze solution placed in the radiator or for the oil or gasoline which is necessary for operating the vehicle.

DIVERSION IN TRANSIT

Vehicles described herein, may be diverted or reconsigned and the rate in effect on date of shipment from point of origin to final destination will be protected, no charge being made for change of consignee or destination provided such diversion or reconsignment is effected while the property is in possession of this Company. Where shipments are reconsigned to destinations beyond the Port, rates lawfully on file with the Interstate Commerce Commission will be applied.

Item No. 10

Commodity rates on trailers, camp and trailer, freight, without motive power

(In cents per vehicle according to weight and overall measurement)

Weights	Between Detroit, Michigan, and Cleveland, Ohio, when overall measurements are:						
	20 feet and under	Over 20 feet to and including 22 feet	Over 22 feet to and including 24 feet	Over 24 feet to and including 26 feet	Over 26 feet to and including 28 feet	Over 28 feet to and including 30 feet	Over 30 feet
3,500 pounds or less	1,100	1,300	1,500	1,700	1,900	2,100	2,300
3,501 pounds to and including 4,000 pounds	1,450	1,650	1,850	2,050	2,250	2,450	2,650
4,001 pounds to and including 4,500 pounds	1,500	1,700	1,900	2,100	2,300	2,500	2,700
4,501 pounds to and including 6,000 pounds	1,650	1,850	2,050	2,250	2,450	2,650	2,850
6,001 pounds to and including 7,000 pounds	1,700	1,900	2,100	2,300	2,500	2,700	2,900
7,001 pounds to and including 7,500 pounds	1,800	2,000	2,200	2,400	2,600	2,800	3,000
Over 7,500 pounds	1,900	2,100	2,300	2,500	2,700	2,900	3,100

When an additional chassis is shipped loaded inside of body type trailers or mounted upon another chassis, an additional charge of fifty (50) percent of the rate applicable will be charged with a maximum rate of $40.00 for the two units so shipped.

429 I. C. C. No. 9

T. J. McCarthy Steamship Company

Tariff No. 9

Local Freight Tariff Naming Commodity Rates on Trailers (As Described Herein) Between Detroit, Michigan, and Buffalo, New York

The rates named herein are subject to suspension at the close and restoration on the opening of navigation as provided on page No. 2.

Issued February 27, 1941. Effective March 1, 1941. Issued on one day's notice under authority of Rule 1 (c) of Tariff circular No. 22. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Mich.

APPLICATION OF TARIFF

The rates named herein will apply from and to established points of receipt and delivery of the T. J. McCarthy Steamship Company.

DISCONTINUANCE AND RESTORATION OF SERVICE

The rates named in this tariff are effective only during the season of navigation of the T. J. McCarthy Steamship Company, which is from April 29th to December 12th.

TERMINAL AND OTHER PRIVILEGES

Except as otherwise provided herein, shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by carrier or their agents, providing for diversion, reconsignment, storage or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper or consignee, which are lawfully on file with the Interstate Commerce Commission.

STORAGE CHARGES

Shipments transported under this tariff will be allowed (168 hours) seven days free time after the first seven A. M. after notice of arrival has been given in writing or as otherwise agreed, and will, after the expiration of the free time, be subject to a storage charge of ten cents per day or fraction thereof, per vehicle, minimum charge fifty cents per vehicle. At any time after the expiration of the (168 hours) seven days free time referred to above, the carrier reserves the right to forward such shipments to a public warehouse. Such shipment will be transported from the docks of the carrier to a public warehouse at the expense of the owner and there held without liability on the part of the carrier, subject to lien for freight and other lawful charges, including a reasonable charge for storage.

DIVERSION IN TRANSIT

Vehicles described herein may be diverted or reconsigned and the rate in effect on date of shipment, from point of origin to final destination will be protected, no charge being made for change of consignee or destination provided such diversion or reconsignment is effected while the property is in possession of this Company. Where shipments are reconsigned to destinations beyond the Port, rates lawfully on file with the Interstate Commerce Commission will be applied.

MARINE INSURANCE

Property (moving under rates named or provided for in this tariff), while in the custody of this Company, from the time this Company receives it from shipper or from prior connecting carrier on docks, piers, wharves, bulkheads, platforms, lighters and or craft, transfers and land conveyances at ports of loading of their vessels and while it is waterborne on vessels at and between ports and while it is on docks, piers, wharves, bulkheads, platforms, lighters, and or craft, transfers, and land conveyances at port of discharge of vessels, until it is delivered to consignee (but not beyond the free time allowed for delivery as designated by tariffs lawfully on file with the Interstate Commerce Commission, nor while held by this Company as warehouseman) or until it is delivered to connecting carriers thereat, is insured:

While Water-borne, against the perils of the seas, rivers, lakes, bays, canals and other waters, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, explosion (howsoever or wheresoever occurring), bursting of boil-

ers, breakage of shafts, latent defect in hull, machinery or appliances, faults or errors in the navigation or management of vessels by the master, mariners, mates, engineers, or pilots, and all other like perils or misfortunes, that have or shall come to the hurt, detriment, damage to or loss of the said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable.

While on Docks, Piers, Wharves, Bulkheads, Platforms, Transfers, and Land Conveyances, or elsewhere on shore, against the risks of fire, lightning, explosion (howsoever or wheresoever occurring), ice, floods, the rising of navigable waters, cyclones, hurricanes, tornadoes, windstorms, transportation, the collapse and/or subsidence of docks, piers, wharves, bulkheads, platforms, and/or of any buildings thereon.

Losses Payable within Thirty Days after proof of loss and proof of interest in said property have been furnished.

Applicable only to the T. J. McCarthy Steamship Company and to the property while in its custody; and the liability herein assumed is that of this Company only.

430 Item No. 10

Commodity rates on trailers, camp and trailers, freight, without motor power

(In cents per Vehicle according to weight)

Between Detroit, Michigan and Buffalo, N. Y.:

Weighing 3,000 pounds or less	1700
Weighing over 3,000 pounds to and including 3,500 pounds	2000
Weighing over 3,500 pounds to and including 4,000 pounds	2200
Weighing over 4,000 pounds to and including 4,500 pounds	2400
Weighing over 4,500 pounds to and including 5,000 pounds	2600
Weighing over 5,000 pounds to and including 5,500 pounds	2800
Weighing over 5,500 pounds to and including 6,000 pounds	3000
Weighing over 6,000 pounds to and including 6,500 pounds	3200
Weighing over 6,500 pounds to and including 7,000 pounds	3400
Weighing over 7,000 pounds to and including 7,500 pounds	3600
Weighing over 7,500 pounds to and including 8,000 pounds	3800
Weighing over 8,000 pounds to and including 8,500 pounds	4000
Weighing over 8,500 pounds	4200

Item No. 15.

RATES ON ACCESSORIES, ATTACHMENTS, OR ADVERTISING MATTER

The rates on vehicles as described in this tariff will include all accessories or attachments, including advertising matter, which will form part of the complete vehicle when attached to or placed inside of the vehicle of which they are a part. No charge will be made for the weight of the water or anti-freeze solution placed in

the radiator or for the oil or gasoline which is necessary for operating the vehicle.

431 Supplement No. 1 to I. C. C. No. 9; Supplement No. 1 contains all changes.

T. J. McCarthy Steamship Company

Supplement No. 1 to Tariff No. 9

LOCAL FREIGHT TARIFF NAMING COMMODITY RATES ON TRAILERS (AS DESCRIBED HEREIN) BETWEEN DETROIT, MICHIGAN, AND BUFFALO, NEW YORK

The rates named herein are subject to suspension at the close and restoration on the opening of navigation as provided on page No. 2.

Issued March 31, 1941. Effective April 30, 1941. Issued by Wm. J. Hoffman, General Freight Agent, 210 Wayne Street, Detroit, Mich.

*†Item No. 10-A
Cancels Item No. 10.

Commodity rates on trailers, camp and trailers, freight, without motor power.

(In cents per vehicle according to weight and over-all measurement)

Weight	Between Detroit, Michigan and Buffalo, N. Y., when over-all measurements are—						
	20 feet and under	Over 20 feet to and including 22 feet	Over 22 feet to and including 24 feet	Over 24 feet to and including 26 feet	Over 26 feet to and including 28 feet	Over 28 feet to and including 30 feet	Over 30 feet
3,500 pounds or less	1,700	1,800	2,000	2,200	2,400	2,600	3,000
3,501 pounds to and including 4,000 pounds	1,800	2,000	2,200	2,400	2,600	2,800	3,200
4,001 pounds to and including 4,500 pounds	1,900	2,200	2,400	2,600	2,800	3,000	3,400
4,501 pounds to and including 5,000 pounds	2,000	2,300	2,600	2,800	3,000	3,200	3,600
5,001 pounds to and including 5,500 pounds	2,100	2,400	2,700	2,900	3,100	3,300	3,800
5,501 pounds to and including 6,000 pounds	2,200	2,500	2,800	3,000	3,200	3,400	4,000
6,001 pounds to and including 6,500 pounds	2,300	2,600	2,900	3,100	3,300	3,500	4,200
6,501 pounds to and including 7,000 pounds	2,400	2,700	3,000	3,200	3,400	3,600	4,400
7,001 pounds to and including 7,500 pounds	2,500	2,800	3,100	3,300	3,500	3,700	4,600
Over 7,500 pounds	2,600	2,900	3,200	3,400	3,600	3,800	4,800

*Reduction.
†Increase.

When an additional chassis is shipped loaded inside of body type of trailers or mounted upon another chassis, an additional charge of fifty (50) percent of the rate applicable will be charged with a maximum rate of $50.00 for the two units so shipped.

432 *Exhibit 30*

American Form 1936.

LAKE GRAIN BILL OF LADING.

No. ---------- DULUTH, MINN., *November 30th, 1939.*

Grain Storage. The carrier is not engaged in the business of warehousing grain. If accepts grain for storage by special arrangement only and then only on the terms and conditions contained in the form of special contract for private storage of grain on the reverse side hereof.

Shipped in apparent good order and condition by Minnesota Linseed Oil Paint Co. as agents and forwarders, for account and risk of whom it may concern, on board the Str. "George H. Ingalls," whereof ---------- is master, now in the port of Duluth-Superior and bound for Cleveland, Ohio, the following property as herein described, shippers' weight (weight, quality and value unknown to the loaders signed), to be delivered in like order and condition (the dangers of navigation, fire and collision excepted), as consigned herein, or to his or their assigns or assignees, upon paying the freight and charges as noted below:

It is understood and agreed that with respect to this shipment the carrier and ship have not and do not hold themselves out as transporting cargo for the general public and only transport cargo as private carrier under private contract. The liability which the carrier assumes with respect to this shipment, is subject to the following terms and conditions:

1. This shipment is and shall be subject to the terms and provisions of and all the exemptions from liability contained in the Act of Congress approved April 16, 1936, and known as the "Carriage of Goods by Sea Act," except with respect to the exemptions referred to in the next succeeding paragraph.

2. Notwithstanding the foregoing, it is understood and agreed that the carrier and the ship shall not be responsible or liable for loss or damage to cargo in connection with the custody and care and handling of cargo prior to the loading on and subsequent to the discharge from the ship, as provided for in Section 7 of said Act of Congress.

3. In the event that a care party is named herein, delivery to such care party shall constitute right delivery by the vessel of the cargo covered hereby and thereupon liability of the carrier with respect to the delivery of the cargo shall terminate.

4. The carrier shall make no claim for any overrun in the outturn of cargo and assumes no responsibility for shortage or for differences in weights caused by natural shrinkage or discrepancies in elevator weights, but the carrier shall allow a fixed amount of one-quarter bushel per thousand bushels as tare, the same to be deducted from the freight at market price, port of destination, on day of unloading. All grain on board is to be delivered and freight is to be collected upon out-turn weight. Where two or more shipments are carried in the same compartment of the vessel, the shortage, if any, resulting from unloading the last of these, shall be borne pro rata by the shippers.

5. Neither the carrier nor the ship shall be liable for any claim whatsoever, whensoever and howsoever occurring, arising from compliance by the carrier with any directions whatsoever by any government or by any person purporting to act under authority thereof.

6. In the event of accident, danger, damage, or disaster before or after the commencement of the voyage, resulting from any cause whatsoever whether due to negligence or not, for which, or for the consequences of which, the shipowner is not responsible, by statute or contract or otherwise, the shippers, consignees or owners of the cargo shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the cargo.

7. The vessel shall have liberty to tow or be towed; to assist vessels under all conditions; to deviate for the purpose of making repairs, taking on fuel, ship's supplies and equipment, loading or discharging cargo, crew, passengers or other persons having business with the vessel.

8. Nothing in this bill of lading shall operate to limit or deprive the carrier of any statutory protection or limitation of liability.

In witness whereof, the agents of the said vessel have affirmed to one Bill of Lading and copies thereof, the ORIGINAL Bill of Lading being alone negotiable, and the said copies marked on their face as follows: "Copy—Not Negotiable."

Order of Minnesota Linseed Oil Paint Co.
Care of Sherwin Williams Co., Cleveland, Ohio.
Notify Sherwin Williams Co., Cleveland, Ohio.

1936

SPECIAL CONTRACT FOR PRIVATE STORAGE OF GRAIN AND OR SEED

VESSEL STR. GEORGE H. INGALLS

IT IS HEREBY AGREED in consideration of the sum of as Agreed

that a cargo of grain shall be stored on the vessel, Str. GEORGE H. INGALLS from on or abo

30th day of November, 19 39; to on or about the 1st day of April

at the port of Cleveland, Ohio. or as near thereto as the vessel by the exercise of due diligence

safely navigate.

1. It is understood and agreed that the vessel is to be considered as a vessel and not a warehouse throughout the storage pe
It is further understood and agreed that the shipowner is not engaged in the business of warehousing grain or any other commo
and does not hold itself out generally as engaged in the business of storing grain for profit, and hereby assumes no obligation in re
to inspecting, ventilating, or conditioning cargo during the storage period referred to in this contract. If the shipowner receives
information indicating that the grain is, or is likely to be damaged, it shall be its obligation to report this information promptly t
shipper.

2. The shipowner does not warrant the fitness of the vessel or its appliances for the storage of grain, but does warrent to
due diligence to furnish a seaworthy vessel as a bulk carrier of grain for the storage period. The shipowner shall not be liable for
or damage due to any defect, latent or otherwise, in the vessel or its appliances if at the time of loading the grain it shall have exer
due diligence to furnish a seaworthy vessel as a bulk carrier of grain.

3. The shipowner shall not be liable for loss or damage to the grain whensoever and howsoever occurring not due to its
gence or the negligence of its servants and employees.

4. Notwithstanding the provisions of the foregoing paragraphs the shipowner in any event shall not be liable for any
damage to the grain by collisions, perils of the sea, or fault or error in navigation of the vessel; or by fire unless the fire is cau
the neglect or design of the shipowner.

5. The burden of proving that any damage was not due to inherent vice shall be on the grain owner.

6. In the event of accident, danger, damage, or disaster during the storage, resulting from any cause whatsoever, even if
negligence, for which, or for the consequences of which, the shipowner is not responsible by statute or contract or otherwise, the shi
consignees or owners of the cargo shall contribute with the shipowner as in general average to the payment of any sacrifices, lo
expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in resp
the cargo.

BOLAND & CONKLIN, Agents

By H. F. Hubbard
Shipowner

Grain Owner

Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from strikes or lockouts or stoppage or restraint of labor from whatever cause whether occurring aboard the ship or elsewhere, nor will the carrier make claim against the shipper, consignee, or cargo for detention of the ship caused by the aforesaid labor disturbances.

Copy—Not Negotiable

Consisting of One Hundred Sixty Thousand (160,000) Bushels No. 1 Flax, 17½ Dockage.

Freight from Duluth-Superior, to Cleveland, Ohio being as agreed cents per bushel of Fifty-six (56) pounds.

Grain loaded all over.

It is understood and agreed that the above rate of freight includes winter storage in vessel at destination until April 1st 1940. All but one-half cent per bushel freight payable upon arrival of vessel at destination, balance as cargo is unloaded.

It is understood and agreed that the vessel shall not be responsible for shortage exceeding one-half bushel per one thousand bushels carried. The vessel to deliver all Grain on board, collect Freight upon actual outturn and make no Claim for any overrun.

160000 Bus. 00 Lbs.

BOLAND & CONNELLUS, *Agents.*
By H. F. HUBBARD.

433 *Exhibit 31.*

Number .....

Lake Bill of Lading for Bulk Cargoes other than Grain and Seed

BUFFALO, N. Y., *Nov. 12, 1938.*

Shipped, in apparent good order and condition by Royster Guano Company as agents and forwarders, for account and risk of whom it may concern, on board the steamer called "Geo. H. Ingalls," whereof ..... is Master, now in the Port of Buffalo, N. Y., and bound for Toledo, Ohio, the following articles as herein marked and described, to be delivered in like good order and condition (the dangers of navigation, fire, spontaneous combustion, explosions and collisions excepted), as addressed in the margin, or to his or their assigns or consignees, only upon payment of the freight and charges noted below. The shipment is subject to the following terms and conditions:

1. The carrier shall not be liable for any claim whatsoever, howsoever and howsoever occurring, arising from compliance

by the carrier with any directions whatsoever by any government or by any person purporting to act under authority thereof; or resulting from fault or error in the management or navigation of the vessel; or unseaworthiness or latent or other defect in any part of the hull, boilers, machinery, or appurtenances of the vessel, even though existing at the time of loading or at the beginning of the voyage, provided the carrier shall have exercised due diligence to make the vessel seaworthy with respect to the matters or things producing the loss, damage or delay.

2. In the event of accident, danger, damage or disaster before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the shipowner is not responsible by statute or contract or otherwise, the shippers, consignees or owners of the cargo shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the cargo.

3. With liberty either before or after proceeding towards the port of discharge, to proceed, to, and/or stay at, any ports or places whatsoever (although in a contrary direction to, or out of, or beyond, the route to the said port of discharge) once or oftener, in any order, backwards or forwards, for the purpose of drydocking (even with cargo on board), or loading or discharging cargo or passengers, or for any purpose whatsoever. Nothing in this Bill of Lading, whether written or printed, or implied therefrom, shall limit or affect the provisions of this clause.

4. Permission is granted vessel to deviate to load, transport and unload automobiles and other goods and/or merchandise on deck.

5. Permission given to tow and to be towed.

In witness whereof, the Master or authorized officer of vessel or agents hath affirmed to Six Bills of Lading of this tenor and date; one of which being accomplished, the others to stand void.

Consignee and destination, Royster Guano Co., Toledo, Ohio; description, 2,800 Gross Tons Phosphate Rock. Ex. Barges "Katie Feeney," "John D. Ross," "Marion Ryan," "American Aviator."

Lake Freight as agreed per net ton. Payable as agreed. For'd Aft.

BOLAND & CORNELIUS, *Agents.*
By R. O. B.

434 *Exhibit 32*

Number 4
Number _____
September 24, 1938.

Shipped, in apparent good order and condition, by The M. A. Hanna Company as agents and forwarders, for account and risk of whom it may concern, on board the Vessel called "Ingalls," whereof _____ is Master, now in the Port of Sandusky, Ohio and bound for Hubbell, Mich., the following articles as herein marked and described, to be delivered in like good order and condition (the dangers of navigation, fire, spontaneous combustion, explosions and collisions excepted), as addressed in the margin, or to his or their assigns or consignees, only upon payment of the freight and charges noted below. The shipment is subject to the following terms and conditions:

1. The carrier shall not be liable for any claim whatsoever, whensoever and howsoever occurring, arising from compliance by the carrier with any directions whatsoever by any government or by any person purporting to act under authority thereof; or resulting from fault or error in the management or navigation of the vessel; or unseaworthiness or latent or other defect in any part of the hull, boilers, machinery, or appurtenances of the vessel, even though existing at the time of loading or at the beginning of the voyage, provided the carrier shall have exercised due diligence to make the vessel seaworthy with respect to the matters or things producing the loss, damage or delay.

2. In the event of accident, danger, damage or disaster before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the shipowner is not responsible, by statute or contract or otherwise, the shippers, consignees or owners of the cargo shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the cargo.

3. With liberty either before or after proceeding towards the port of discharge, to proceed to, and/or stay at, any ports or places whatsoever (although in a contrary direction to, or out of, or beyond, the route to the said port of discharge) once or oftener, in any order, backwards or forwards, for the purpose of drydocking (even with cargo on board), or loading or discharging cargo or passengers, or for any purpose whatsoever. Nothing in this Bill of Lading, whether written or printed, or implied therefrom, shall limit or affect the provisions of this clause.

Permission given to tow and to be towed.

In Witness Whereof, the Master or authorized officer of vessel or agents hath affirmed to 7 Bills of Lading of this tenor and date; one of which being accomplished, the others to stand void.

Consignee and Destination, Calumet & Hecla Consolidated Copper Co., Hubbell, Michigan; Description, 5,010.10 tons Chilton 2" Lump Coal. Insured.

Permission is granted vessel to deviate to load and unload automobiles and other goods and/or merchandise on deck.

Lake Freight 45¢ per net ton. Payable by_____
At Cleveland, O. For'd 14 Aft 17–3.

AUTOMOTIVE TRADES STEAMSHIP CO.,
By BOLAND & CORNELIUS, *Agents*,
Terminal Tower Bldg., Cleveland, Ohio.

THE M. A. HANNA CO., LAKE COAL DEPT.,
E. F. SAUER.

435 Before the Interstate Commerce Commission

W–592

T. J. MCCARTHY STEAMSHIP COMPANY, APPLICATION TO OPERATE AS A COMMON CARRIER BY WATER

W–729

AUTOMOTIVE TRADES STEAMSHIP COMPANY, APPLICATION TO OPERATE AS A COMMON CARRIER BY WATER

HEARING ROOM "B," WASHINGTON, D. C.,
Friday, October 30, 1942.

The above-entitled matters came on for oral argument before Division 4 at 10:00 o'clock, a. m.

Present: Commissioners PORTER (presiding), MAHAFFIE, and MILLER.

Appearances: Sparkman D. Foster, 3666 Penobscot Building, Detroit, Michigan, appearing for applicants. S. S. Eisen, 140 Cedar St., New York City, appearing for Nicholson Universal Steamship Company and Detroit and Cleveland Navigation Company.

437 PROCEEDINGS

Commissioner PORTER. The Commission by Division 4 will hear argument in Water Carrier case No. 592, and in Water Carrier case No. 729.

Mr. Foster.

Mr. FOSTER. I wish to apologize for not asking for time.

Commissioner PORTER. This is your second offense?

Mr. FOSTER. Yes. I did the same thing in the other case. It will not happen again.

Commissioner PORTER. All right. Mr. Foster, you have the opening.

Argument of Mr. Sparkman D. Foster on behalf of the applicants

Mr. FOSTER. If the Commissioners please, I will review just as briefly as I can the history of these two companies.

Mr. McCarthy started out as soliciting agent for the Detroit and Cleveland Navigation Company, back in 1933. In 1935 the arrangement was switched over to where the T. J. McCarthy Steamship Company was the soliciting agent. There was an agreement made with the Detroit and Cleveland Navigation Company after they had put on the one vessel, the Fitch. Any additional ships which Mr. McCarthy's solicitation required could be put on by Mr. McCarthy.

438 When this Act went into effect in 1940, they were under charter to the Detroit and Cleveland Navigation Company. However, during all the period, certain expenses were paid by the T. J. McCarthy Steamship Company and Automotive Steamship Company. The application was filed on the basis that Mr. McArthy did have grandfather rights, that part of these expenses were paid by him and that his vessels were operated over these routes in the transportation of automobiles.

Subsequently, an amended application was filed on the basis of public convenience and necessity. The automobile business dropped off, back when they quit manufacturing automobiles, last fall. By mutual agreement, early in February the arrangement not only as to the soliciting arrangement was mutually cancelled, but the charters which had been exercised, the options which had been exercised for two of these vessels, for 1942 they were also by mutual agreement terminated.

When the hearing came on, the prospect then for any appreciable movement of automobiles during 1942 was very bad. However, the leading shippers of automobiles, the traffic managers of the large automobile companies, who ship perhaps 85 per cent of the automobiles out of Detroit and who were thoroughly familiar with the entire situation, all testified that in their judgment that upon resumption of normal operation that these three ships
439 would be vitally needed to serve the public.

As a matter of fact, with automobile production limited almost exclusively to units for the army and armed serivces, Mr.

McArthy was approached this spring and asked to transport automobiles to Buffalo for the army. Since that time he has been transporting automobiles, with the limited number there were, there were not the facilities to handle the volume which needed to be handled.

We feel very much as the Examiner's proposed report says, this company went out, these two companies went out and spent their own money, because one of the protestants in the hearing today, the Detroit and Cleveland Navigation Company, simply said they would not spend any additional money to put on automobile vessels. When Mr. McArthy first went with that company, the only space which they had was the unused space on their passenger vessels between Detroit and Cleveland. If there was any space left over after the tourists were taken care of, they handled new automobiles. The first season he went with them it was necessary for them to put on automobiles. They worked out a joint partnership arrangement of the expenses and losses of the first automobile boat put on. Later they purchased one vessel, the steamer Fitch. Later they said they were not going to purchase any boats to handle automobile traffic. They later purchased the George G. Meade. Later they purchased the
440 Tremaine, now the T. J. McArthy. She was continued in that traffic from 1936 on. In 1938, 1939 and 1940, the Steamer Ingalls carried automobiles. The actual automobiles carried in 1939, 1940 and 1941, the Steamer Meade transported 19,000 cars; 20,000 in 1940, and 24,000 in 1941. The Tremaine transported 24,000 in 1939; 32,000 in 1940 and 32,000 in 1941. The Ingalls transported 24,000 cars in 1940 and 29,239 in 1941. We feel while we are not urging the application now on the basis of grandfather rights, we do feel that public convenience and necessity will require the use of these vessels upon the resumption of production of automobiles.

Commissioner PORTER. The proposed report recommends on the basis of convenience and necessity, does it not?

Mr. FOSTER. Yes.

Commissioner MAHAFFIE. Are you handling exclusively for the armed services now?

Mr. FOSTER. Yes.

Commissioner MAHAFFIE. On that tariff as a common carrier or what is the arrangement?

Mr. FOSTER. It is on the regular tariff, yes the regular tariff. We might say that in the whole situation on vessels on the
Lakes, it was radically changed commencing with last win-
441 ter. The War Production Board issued a directive to the O. D. T. to bring down 89,500,000 tons of iron ore. All of the vessels previously engaged in the transportation of auto-

mobiles are now engaged either in the transportation of iron ore, or of grain. The applicant's three vessels here have had their elevators taken out of them. They have had the main planking and support of the between decks taken out of them so they can handle grain. The automobiles, the motor vehicles which are presently being handled by both applicants are handled along with grain. The vessels haul grain to the head of the lakes, stop by Detroit and load these motor vehicles on the spare top deck. I don't believe this year, with the exception of very few cars, that any of the carriers have transported other than for the armed forces. There might have been a very small movement of cars that were stationed at some particular place, might have moved back. I will say 99 percent of the cars which have been moved were motor vehicles for the armed services.

The testimony just cannot help but lead to the conclusion that the Examiner outlined in his proposed report. The protestant, the Detroit and Cleveland Navigation Company, when they saw this traffic was going to drop off, they did ask that the whole arrangement be cancelled. Mr. McCarthy's solicitation agreement had two more years to run. That was on the percentage basis. They had the right to exercise options for two addi-
442 tional years on two of the vessels. That has been mutually cancelled, and the McCarthy Steamship Company and the Automotive Steamship Company are now free to serve the public without any contract obligations to anyone.

The Company has no funded debt and as of September 30, 1941, the McCarthy Steamship Company and the Automotive Steamship Company respectively had total assets of $111,000 and 134,000 and liabilities of $79,000 and $30,000. In 1941 these companies had gross operating revenues of $76,000 and of $28,000, and represented a capital investment of $246,000.

I certainly don't believe it would be in the public interest to say to these two applicants who have invested their own money to serve this particular trade, that they just no longer were going to be permitted to operate. Mr. McCarthy has been in the automotive transportation for the past twenty years. The Detroit and Cleveland Navigation Company, until the time he went with them, was primarily a passenger and package freight line, handling very few automobiles.

Commissioner MILLER. Do you except to the proposed report or do you agree with it?

Mr. FOSTER. We agree with it entirely. We did not file exceptions on the grandfather phase of it, because the situation,
443 from the time we filed it, until the adjourned hearing had changed completely. We do feel that the proposed report is entirely correct on the theory of public convenience and neces-

sity, and we filed no exceptions to it on the denial of rights under the grandfather clause.

These vessels——

Commissioner MAHAFFIE. I have the impression that you applied for more than one right.

Mr. FOSTER. We did apply for the right. We set up in our original application the fact that these vessels had been used by the Detroit and Cleveland Navigation Company, not only engaged in transportation of automobiles, but miscellaneous or package freight. However, we are not urging that we be granted that right, because Mr. McCarthy did not in any way share the revenue on that business. We are not urging that he be granted the right for this miscellaneous package freight. We are here requesting he be granted rights purely and simply on the transportation of motor vehicles. We feel he should be granted those rights, not only on Lake Erie, but as the proposed report recommends, on the entire Great Lakes. That is from Detroit to Duluth, and Detroit to Buffalo. Those are the principal points. The testimony of the interested shippers, as of the Hudson Motor Car Company, Chrysler and Ford Motor Company, were that these vessels would be needed to serve the Lakes up there when they began to resume the production of passenger auto-
444 mobiles. There is no question but what they will be needed, not only on the Detroit and Cleveland-Buffalo run, but also on the Detroit to Duluth run.

Commissioner MAHAFFIE. Detroit to Chicago, also?

Mr. FOSTER. There has not been any cars moved to Chicago for a good many years.

Commissioner MAHAFFIE. I understood you were asking for the entire Great Lakes.

Mr. FOSTER. If that movement develops, primarily we are interested from Detroit-Cleveland to Buffalo, and Detroit to Duluth.

Commissioner MAHAFFIE. Are you asking for Chicago, or not?

Mr. FOSTER. No.

Commissioner MAHAFFIE. You are not asking for the entire Great Lakes?

Mr. FOSTER. No.

Mr. McCarthy just called my attention to the fact there was only one year to run on the solicitation contract instead of two. It was through this year.

The peak period of the movement of automobiles, as pointed out in the proposed report, one of the protestants, the Nicholson Universal Steamship Company, have taken the position not only in this case, but the Nicholson Transit case, that they have
445 ample facilities to move all these automobiles. They argued

from the standpoint if they operated 241 days, which is longer than anyone ever operated from the lower Lakes to the head of the Lakes, the only way they operated that time was a special vessel adapted to breaking ice; between Detroit and Cleveland, no one ever operated for that length of time, between Detroit and any other port.

They argue they have the facilities to handle all these automobiles. As Mr. Brenham pointed out in his testimony, that might be so if it was possible for the automobile manufacturer to so arrange his schedule to meet the arrangement of this one boat company. The movement of automobiles by boat is really comparatively small amount to Buffalo and Cleveland, to Duluth and for points immediately beyond.

The fact remains that all ships, including the applicant's ships and the protestants' ships are all operated to their capacity during the production period and during the normal production of automobiles. The change over is in the summer and the period during July and August of about six or seven weeks there where there is virtually no production of automobiles at all. That accounts for the light time all these vessels have to undergo, that are adapted purely for the transportation of automobiles. With the automobile production as it is, there is no question but all facilities are taxed during the production of automobiles, which is
446 the commencement of the season up there, which is April 15th, up until late June or early July. Then they change their models, get into production beginning along in September. They are very busy then until the end of the season.

So there is a great deal of lost time to all ships engaged in this traffic, every season, because during one period there, there simply is no cargo or automobiles for them to transport.

We feel the shippers who have for transportation between 85 to 90 percent of the automobiles, are a good judge as to whether or not these facilities are going to be needed. They have been needed. They have been used and they represent a large investment to these companies and they are particularly adapted to the transportation of automobiles. The vessels were surveyed by the O. D. T. as to whether or not they could not be converted into the transportation of iron ore. The conclusion was that the expense which would be necessary to convert them into the movement of iron ore would be very large and absolutely prohibitive, in the case of the need. These vessels, however, are in position and are capable of transporting grain and under the authority of the O. D. T. have been engaged in the transportation of grain all this season. They were permitted to remain in the grain trade. They were converted to that trade as inexpensively as pos-
447 sible and in such a manner as they could be as easily as

possible converted back to the automobile trade. I mean the material which was taken from the top decks and from the between decks is being preserved so it may be put back into these vessels and that they may re-engage in the transportation of automobiles when that transportation is again available.

Commissioner MILLER. Is that steel decks, or whatever?

Mr. FOSTER. The main supports are steel, Shelley beams and "H" beams.

Commissioner MILLER. Won't the W. P. B. take that?

Mr. FOSTER. As a matter of fact, those we take off the W. P. B did take some of it. It was only necessary to take out some of the elevator leg so we could get down into these hatches. It was not necessary to even open all the hatches. Mr. McCarthy had a time keeping all of that stuff that was actually taken off the boat and put on the dock. The W. P. B. caught up with him and took some of it.

Commissioner PORTER. Mr. Eisen.

Argument of Mr. S. S. Eisen on behalf of the Nicholson Universal S. S. Co. and the Detroit & Cleveland Navigation Co.

Mr. EISEN. May it please the Division: I speak for the Nicholson Universal Steamship Company and the Detroit and Cleveland Navigation Company, common carriers on the Lakes.

448 I do not want to comment on Mr. Foster's remarks with relation to the applicant's present activities, because nothing of that is shown on the record. I am not going to comment on it.

This proceeding does not present to the Commission any new or novel set of facts. The counterpart of every issue herein has been before this Commission, particularly under Part II of the Act, and in Part III cases.

Commissioner PORTER. Those don't necessarily govern, do they, water?

Mr. EISEN. Pardon?

Commissioner PORTER. The fact that rail cases and motor cases have been before us, does not necessarily bind us in deciding water cases?

Mr. EISEN. No; except the section of the statutes set out in Part II is the same thing as the section Part III.

Commissioner PORTER. Mustn't we have in mind the different practices, matters of operation, things of that kind?

Mr. EISEN. Yes. You certainly do, except as I will indicate you adopted your Part II findings in similar situations under Part III, as I will show, you have done in precisely the same issues here.

Now even under Part III findings you have enunciated clearly clear cut rules of water. You have adopted your
449 Part II findings. The United States Supreme Court has upheld you.

Despite the fact we have such fundamental issues here, we are arguing the case only because it came about in the Examiner's proposed report, that he repudiates the language of the Act, repudiates your previous findings, those which the Supreme Court has upheld, as I will show.

This proceeding was originally brought before you by virtue of an application filed by the applicants, a grandfather application as Mr. Foster testified. Because of applicants' realization of their inability to sustain the burden of proof under the grandfather act, they filed an interim operation application which is an application to perpetuate an operation in effect on February 1, 1941. There is no doubt of the fact it was an interim application. Mr. Foster termed it such throughout the hearing.

The Commission's order of hearing notice called it an application to continue an operation in effect on February 1, 1941.

So that technically the only issue before you is a determination, one, of whether applicants should be permitted to continue operations in effect on January 1, 1940, and, two, was applicant a common carrier on February 1, 1941, and does public convenience and necessity require the perpetuation of that activity.

450 Let us review the factual details in their entirety, as they affect this proceeding. I think the Examiner—the Commission asked the question whether there wasn't more than one application or set of rights sought here. There are two sets of rights, duplicate rights being sought by the same applicant, as I shall show. The Examiner has recommended the granting of both.

The applicants are the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company. The record shows there is common control, to all outward appearances they are the same company. They are both the alter ego of Mr. T. J. McCarthy. If it were not for the corporate fiction they wouldn't be here as two companies.

T. J. McCarthy owns the steamer "George W. Mead." The Automotive Trades Steamship Company owns the steamers "Morris S. Tremaine" and "George Ingalls."

In 1937, the Meade and Tremaine were chartered to the Detroit and Cleveland Navigation Company, to which I shall refer hereafter to the D & C for convenience. In 1940, the Ingalls likewise was so chartered. Those charters remained in effect through the season of 1941.

Concurrently with that chartering of the vessels, there was an agreement entered into with the applicant and the D & C. Under that solicitation agreement the applicant was to solicit
451 automobiles exclusively for the D & C. Under that agreement the applicant was to solicit, as I say, 100 percent for the D & C, and they devoted all their time and energy to that purpose, they held out only the D & C. There was no holding out of the applicant. All advertising matter, circulars and what not distributed were distributed by the solicitors in the name of D & C. That was the only holding out during this entire period, when the name of applicant appeared, it appeared only as representative or employee of the D & C.

Let us look at the charter parties. The three vessels were turned over to the D & C for the D & C's exclusive use. The crews of the vessels became the employees of the D & C. The D & C paid their salaries. The D & C paid workmen's compensation and social security. The D & C paid all the cost of maintenance and operations of the vessels, including officers' salaries, cost of fuel, oil, grease, cost of engineers' supplies, cost of stewards' department supplies, cost of towing vessels by tow, which was necessary; cost of repair and upkeep of vessels, equipment, machinery, boilers and other appurtenances; cost of all damages resulting from collisions in which applicants' vessels were participants.

Mr. Foster says the applicant bore certain parts of the expenses. That is right. It shows in the record that they bore during
452 the season of closed navigation. During the period of open navigation, the D & C paid 100 percent. There is no dispute, Mr. McCarthy admitted on the stand, that through the season the D & C had complete control, and dominion over the vessels. The applicant could never interfere with the operation of the vessels, could never order the ships dispatched to any part. He could not assume any operating factor in connection therewith.

It would appear unnecessary to go beyond section 302 (e) of the Act in disposing of this proceeding. That section states that anyone engaged in the charter of vessels to carrier, performs an exempt operation, not subject to regulation. Denial of these applications would permit applicant to continue in the future its past activities of chartering vessels, and, accordingly, would preserve unto the applicant the substantial parity between future and prior bona fide operations as is required by the U. S. Supreme Court, in United States vs. Carolina Freight Carriers Association, 315 U. S. 475.

As a matter of fact, the applicant states if these applications are not granted, they will continue in the future to make their

boats available under charter parties to the existing common carriers.

The proposed report goes away beyond the issues precipitated by the pleadings. The applicant, with respect to automobiles, prayed only for rights in Lake Erie. That is all the proof shows, all he asks for. The Examiner recommends general automobile rights throughout the ports.

453 The Examiner treats the application herein as though they were applications for entirely new operations, not interim operation applications.

With respect thereto, the protestants relied on the Commission's hearing notice which stated that the applications were continuance of operations on February 1, 1941, and also on the form. We were not wholly prepared to meet in every respect the issues of new proceedings such as was construed by the Examiner. We were, however, denied our request for adjournment to submit that additional testimony. We are not pressing that issue here.

Let us look at exactly what proof of public convenience and necessity was adduced by the applicant. Aside from a few shipper witnesses who testified very bluntly, they were interested in seeing Mr. T. J. McCarthy stay in the picture, they did not care how many vessels there were, what the availability of space was or anything else, they would like to see Mr. T. J. McCarthy stay in the picture because he was an old-timer in the automobile trade.

Disregarding their testimony, let us look at the rest of the testimony. This is the essence of the testimony on the issue of public convenience and necessity. If applicant's three vessels were not utilized by the common carriers in the trade in the last few years and if the common carriers in the trade had made

454 no effort to supplant those three boats, assuming they were not available and if the same method and means of dispatching the boats were used, without these three boats, as were used with the three boats, then in the opinion of these witnesses the common carriers would not be in position to handle all of the traffic.

The same general set of questions along that line was asked of each witness; that was what the witnesses testified about. All this.

Now the Act says nothing about the grant of a certificate of public convenience and necessity on the basis of past operations or past necessity. The Act calls for the proof of present or future public convenience and necessity. But even so, let us analyze this past necessity. In order to find that even past necessity existed, you would have to find that the existing boats lines could not carry additional automobiles or that the existing boat lines would not

have endeavored to secure additional boats, additional bottoms, that additional bottoms were unavailable.

Page 137 of the record, Mr. T. J. McCarthy testified that these three vessels were acquired by the applicants for the purpose of chartering them to the D & C; that the agreement of the D & C to charter was a consideration, I quote: This is wherein he states that an agreement was a consideration of his act, which signified that he was referring to the D & C. that they
455 (D & C) would "put on the boates that I (T. J. McCarthy) had purchased rather than chartering more outside boats from some other company." In other words, indicating there were other boats available. He inferred and indicated that. He entered into this agreement with the D & C to keep these other boats out, so they would use his.

As to the availability of space on the Lakes, the record clearly shows, for example, that testimony of the Nicholson Universal Steamship Company, contract carrier of automobiles, exclusively on the Lakes, had unused facilities in 1940 to such extent that if they were utilized to their full extent, Nicholson Universal Steamship Company carried additional automobiles of a quantity aggregating 7,342 additional automobiles to Buffalo, or 174,685 additional automobiles to Cleveland. Those figures may not mean anything in and of themselves. But the total offering of automobiles tonnage to all boat lines for all Lakes in the same year was 262,967 automobiles. 262,000, the total offering. Nicholson could have carried additional 174,000 with its existing facilities to Cleveland.

1940 was not a low year in tonnage. 1940 was double that of 1938. It was 65,000 cars greater than 1939. That would increase Nicholson's carrying capacity in the previous years by that amount. The record also shows that during 1935 and 1936,
456 Nicholson Universal had two of its big automobile carriers tied up idle at its Detroit dock throughout the year because there was not sufficient automobile tendering to warrant the running of those two boats.

In 1937, which is known in history as the second largest year of production of automobiles, there still was not sufficient automobiles tendered to warrant the use of those two boats as exclusive automobile carriers. They were converted into combination bulkers and automobile carriers. Nicholson being an exclusive automobile carrier, he stands, ready, and able, of record, to supply any and all automobile carrying facilities as may be necessary. The record shows their financial ability so to do.

The Examiner on sheet 6 of the proposed report says, referring to Nicholson:

"This company contends that it is able under present and prospective conditions to handle any tonnage offered to it without the necessity of acquiring additional vessels. These protestants point out that their present available facilities are more than adequate to handle the automobile traffic on the Great Lakes. They urge that there is no present or immediate future need for the use of applicants' vessels."

It is in the report, but no further comment is made.

457 If additional proof be necessary, answering Mr. Foster's contention of this 241 days operation, in October of 1940, Nicholson carried 29,000 automobiles. The record shows that was not the peak amount. They were handled with dispatch and without delay. If we use that month for a yardstick for the balance of the year, 29,000 in October; in April, Nicholson carried 14,000 cars. Therefore it had space for 15,000 more, using October as a yardstick. In May, it carried 23,000.

Commissioner MAHAFFIE. Wait a minute. Can you do that where you only operate part of April on the Lakes?

Mr. EISEN. Let us exclude April. It depends on when you start. Sometime you start the end of March, and sometime you start the first few days in April. Let us exclude the month of April.

Commissioner MAHAFFIE. Normally, you don't expect to stop until about the middle of April?

Mr. EISEN. It depends on the ice conditions. There have been times when you start in March—that is what is involved here. Lake Erie is the first lake. In May, 23,000 cars were carried, 6,000 less than in October. In June, 19,000 or 10,000 less than October. In July, 7,000 cars were carried, or 22,000 less than October. In August, 1,000 cars were carried, 28,000 less than October. In September it received 13,000 automobiles, 16,000 less than in October. In November it received 26,000, or 3,000 less than October.

458 These facts of record notwithstanding, the proposed report has this to say on sheet 7:

"The automobile traffic on the Great Lakes prior to 1942 required the use of applicants' vessels."

There is no comment as to why they were required, or anything else.

The next sentence:

"It would appear that their use will again be necessary upon resumption of normal production of automobiles."

The proposed report does not make the affirmative statement. It goes into conjecture, "it would appear." There is nothing in the record to sustain that statement.

The proposed report immediately follows with this statement, and this, incidentally, is the cornerstone upon which the recommendation is predicated. This sentence appears next:

"Refusal of applicants' right to initiate such operations with their own vessels would seriously impair, if not entirely destroy, applicants' investment in those vessels. Such refusal would not be in the public interest."

Then you find your suggestion of the issuance of a certificate. Before we get to the legal points, I don't see how refusal of the application or declination of the application would impair those vessels. Those vessels were required for the purpose
459 of chartering, whether or not you denied the applications, those vessels could still be used for the purpose of chartering. The applicant said he would charter them to available lines in the future. How it would impair the investment, I don't know.

Let us get down to the law. If this statement is to be construed as a grounds for giving rights, then the only criterion that you would look to for the issuance of rights of public convenience and necessity or any rights is, one, has the applicant any equipment; two, if we denied the rights would it impair the value of that equipment. That is entirely on the theory which the examiner proposes rights.

Now you have granted under the water carrier act, under Part III, you have granted rights to applications for example in docket No. W-385; Docket No. W. 559. Even if applicants did not own any floating equipment, that has never been the criterion; there you follow the owner-operator cases under Part II of the Act. By the same token, you have denied applications in many cases, to cite a few, Docket No. W-430; Docket No. W-685; W-448, even though the applicant owned equipment. You did not say here that you have to determine whether or not the denial of this application will impair their investment. The Act does not permit of any such thing. The Act says, is there present or future public necessity?

Under the motor carrier act the proceedings are too
460 innumerable to mention where rights have been granted by the Commission to operators who did not own equipment and where applications have been denied to applicants who did own equipment, because they did not sustain the burden of proof set up by the Act.

To adopt the proposed report of the examiner would be to repudiate the law in everything you have done. It would merely be to say to all applicants, here, if you want certificates, come in and show that you own equipment. That is all we require. Show us if you don't get the rights that your investment in that equipment will be impaired.

In Docket W-296, decided July 3, 1942, you refer to the decision of the United States Supreme Court in United States v. Rosenblum Truck Lines, Inc., 315 U. S. 50, as being determina-

tive of water carrier issue; that was a motor carrier case. There, and in many other cases, you have indicated that you are substantially interpreting Part II and Part III under the requirements of the United States Supreme Court, and in United States Navigation Company v. Cunard Steamship Co., 284 U. S. 474, at pages 480 and 481——

Commissioner MAHAFFIE. Would that apply to an interim application, or only a grandfather?

Mr. EISEN. The United States Navigation decision?

Commissioner MAHAFFIE. No; I was thinking about Rosenblum.

461 Mr. EISEN. I will discuss the Rosenblum case in just a minute. I think the theory, while the Supreme Court referred specifically to a grandfather application, I think the theory, is a like situation, as I shall indicate in just a moment.

Under Part II of the act you have had innumerable so-called owner-operating cases. The owner-operator is a man that owns equipment, does not operate it, chooses not to operate it, but to lease it to established carrier, the same as these applicants did. They chose not to operate their own equipment. They chose to charter it out to established carrier. In those owner-operator cases, which have had the sanction of the United States Supreme Court, you have stated that the man that operates is the man who gets the rights. The man who owns does not get the rights. It is the man who performs the operation, actual bona fide operation along the lines suggested by the United States Supreme Court in the Macdonald case.

The leading case——

Commissioner MILLER. In these cases, it is not the owner-operator.

Mr. EISEN. It is to a certain extent, sir.

Commissioner MILLER. I understood they just chartered the vessels.

Mr. EISEN. He chartered the vessel. He also worked for the company as solicitor.

462 Commissioner MILLER. But he did not actually operate the ship?

Mr. EISEN. No; he did not. That is of necessity, because of the physical——

Commissioner MILLER. I was thinking of the analogy with the motor carrier, the owner-operator. The owner actually drives the car.

Mr. EISEN. In many cases; there are numerous cases where the owner owns three or four trucks, charters three or four to

the carrier. The test is in the owner-operator who operates. Here the owner of the vessel chartered the vessel and worked for the carrier. Obviously, he could not perform all the functions on the vessel, as a driver does with the truck. I think the parallel is there 100 per cent to the extent it is physically possible to relate the two.

In our exceptions, beginning at page one, exception one, we give a much more detailed discussion of this owner-operator situation, like instances, detailed summations of situations. I am not going to further belabor you with them.

Let us go to the Rosenblum case. In that case the Supreme Court said it was the intention of Congress not to grant a multiplicity of rights to emanate from a single operation. Here we have two applicants, T. J. McCarthy and Automotive Trades, predicating all their claims on the operations of the D. & C
463 Navigation Company. The D & C ostensibly will secure grandfather rights from you. The examiner recommends that both applicants here, really one and the same, be given two sets of rights, all from the same operation. What they will do with two sets of rights, I don't know, probably retain one and sell the other, something like that. That, of course, is conjecture. Why the public interest will require two sets of rights, I don't know. It is clear the public interest and requirement does not require any.

Applicant has repeatedly argued there would not be a multiplicity of rights emanating from this single operation because the D & C will get its rights from the operation of its own vessel. All that applicants want are the rights emanating from the use by the D & C of their own vessels. This in effect is to say the operation of each unit produces a single right and that there is no multiplicity of rights. I cannot follow.

Mr. Foster has spoken about peak periods. With respect thereto, I merely want to refer you to the decision of Division 5 at 10 M. C. C. 292, where it was held that peak periods do not warrant the issuance of public convenience and necessity applications. They go for the normal year. I think that case speaks for itself.

On October 19, of this year, Division 4 in Docket W-210, National Barge Company, contract carrier application, made a finding that would apply with full force and effect here.
464 All that has to be done is to reproduce it here. I quote:

"If there is need for applicant's vessels they are available, as in the past, for charter by the carriers who provide the whole transportation service."

That is what you said in Docket W-210, in dismissing an application.

Here applicant again would be able to utilize their vessels as they did in the past, chartering them to carriers.

I think that the language of the Commission in the N. C. and D. Oil Company, contract carrier application, 1 M. C. C., 332, is very apropos here, with the exception that the motor carrier industry is used. The water carrier industry could be substituted. I quote:

"We think in order to force a sound, economic condition in the motor carrier industry, existing motor carriers should normally be accorded the right to transport all traffic which they can handle adequately, efficiently, and economically in the territory served by them as against any person now seeking to enter the field of motor carrier transportation and circumstances in such as are here disclosed. It will be noted that applicants do not propose a service which is in any way particularly adapted to the requirements of the shipper or consignee, or in fact which differs in any way from the service now performed in this traffic."

The proposed report on sheet 7 makes this statement:

465 "Applicants had not operated vessels in the automobile-carrying service between points on the Great Lakes prior to the hearing herein. They were not in operation in such service on January 1, 1940, and continuously since, and therefore are not entitled to continue such operations under the so-called grandfather rights of section 309 (a) of the act."

We specifically request a finding as to applicants' status on February 1, 1941, the interim operating date. The report makes no such finding. However, applicant specifically testified there operations on January 1, 1940 were no different, were exactly the same as their operations on February 1, 1941. As a matter of fact, the operations were the same up to February of 1942. So that if they went in operation on January 1, 1940, it is obvious they were not in operation on February 1, 1941. They weren't in operation on February 1, 1941. They have nothing to perpetuate. They ask for continuance of operations in effect on February 1, 1941.

We ask that the Commission amend the proposed report to find, first of all, that the applicants do not possess grandfather rights. I think that is well settled. I think they admit they do not have grandfather rights. We ask the Commission to find the applicants were not in operation as carriers in regular movement on February 1, 1941, therefore have nothing to perpetuate. I

466 ask you to find applicants have failed to sustain the burden of proving public convenience and necessity. There is no need for additional vessels in the service, thereupon, we ask you to dismiss the applications in their entirety.

Commissioner MAHAFFIE. Did the applicants have their own tariffs on February 1, 1941?

Mr. EISEN. Not on February 1, 1941; no, sir. All transportation via the D & C, whenever it occurred, it occurred on the D & C billings, on the D & C tariff rates, rules and regulations. I am glad you mentioned it. I forgot to mention it. They filed a tariff late in 1941. No traffic ever moved under that tariff within this record. I thank you, sir.

Commissioner PORTER. Mr. Foster.

Reply argument of Mr. Sparkman D. Foster on behalf of applicants

Mr. FOSTER. In connection with these vessels laid up in 1937, the two smallest ships they owned, the Sultana and Sonora at that time, all the common carriers had available to them was the bulk automobiles and the large majority of the automobiles that were transported upbound, that is to Lake Michigan and to Duluth were on the decks of these vessels. They paid very nominal amounts. The record shows $5 or $6 an automobile, and collected the full tariff. In these bulk carriers, they would
467 stop by Detroit loaded with coal, and would carry up automobiles. Up to 1937, up until the time these two boats were converted, there was no occasion for them to operate, because they were actually getting deck space of these other vessels cheaper than they could operate a ship to Duluth. Whatever the bulk operator got was practically gravy. He stopped, took him two hours to load, two hours to unload. When the Transportation Act of 1940 was approved, all of the carriers, without exception, that is, what is known as the Lake carrier group that operate the bulk boats, all agreed among themselves they would not transport any more automobiles on deck. None of them have transported any since that time.

The testimony in the Nicholson Transit case, Mr. F. L. Hewitt Jr.'s testimony, incorporated by reference in this case, he testified that during the peak periods of 1940 and 1941, that all of the facilities which were available to them were being used and that they were comfortably loaded. I tried to get them to say they were absolutely loaded to capacity, but he said they were comfortably loaded. The shipper testimony that Mr. Eisen treats so lightly represented eighty-five or ninety percent of the industry, so far as shipping by water is concerned. They testified that during the peak period of 1940 and 1941, with all the facilities there were available, including these three boats, that not only the D & C, through the Nicholson Universal, were
468 unable to handle the traffic. Actually cars which had been

taken down to the automobile dock had to be transported away from those docks by truck. That testimony is in the record. Mr. Hewitt, Jr. also testified to show the seasonal type of this transportation, that during August of 1941, that one of their ships, they claimed they operated eleven, that just one of those ships could have handled all the automobiles on Lake Erie, Lake Michigan, and Duluth, and still had spare time left. We are not claiming this on the basis it is highly seasonal. We are saying it is only about five months out of the year when these automobiles do move by water. Part of the time it is closed, due to ice conditions. The rest of the seven and a half months season, about six weeks, a month and a half of it is taken up on the change over, when there are no automobiles to transport.

I don't think it was the idea of Mr. Brennan, the traffic manager of Chrysler, Mr. Hearn, from the Ford Motor Company, or the Hudson representative to have Mr. McCarthy in this business because he was an oldtimer. Mr. McCarthy has been intimately connected with the transportation of automobiles since they were transported by water, first with Nicholson Transit, and later with the Nicholson Universal, the protestant, and later the D & C, the other protestant. I think they sincerely felt from their knowledge of the business that these vessels were vitally needed.

Mr. Eisen says these common carriers, they will put on
469 these boats. The fact remains that when the traffic was there and developed, one of these protestants flatly refused to put them on, stated they would not further invest in automobile boats. Mr. McCarthy was prevented under his solicitation agreement, starting back in 1933, first with him, later with the T. J. McCarthy Steamship Company, to engage in the transportation. He also was prohibited under that contract from soliciting for any one except the Detroit and Cleveland Navigation Company. I don't think any complaint was made in this record by the Detroit and Cleveland Navigation Co. as to the arrangement between the two companies not being scrupulously observed on both sides during the time they were in operation.

Commissioner MAHAFFIE. Do you approve of it on the continuance of the interim operation?

Mr. FOSTER. At the time the application was filed, I think the notice did say interim operation. At the time of the hearing in Detroit, Mr. McGarth could not adjourn the case to some future date because of other engagements, but he did offer, I think the record will show, that he would give them time the following day. Nicholson Universal's main office is in Detroit.

Commissioner MAHAFFIE. I was asking about your application, was it?

Mr. FOSTER. It is an interim application. We dis-
470 cussed it with the Bureau and we were told that was what to file. All the requirements for that application are the same as the other. We had to file our financial statements.

Commissioner MAHAFFIE. You contend that on the interim application we should consider the convenience and necessity as though it were a new operation?

Mr. FOSTER. Yes. I think you have an absolute right to do it. You have done it in other cases where the situation changes. I certainly do not think that where the applicant has shown he is ready, willing and able to perform where they say this service is absolutely needed, that application should be thrown out on a pure technicality.

Commissioner MAHAFFIE. You think we should disregard the fact, if it be a fact, that you were not operating on the interim date?

Mr. FOSTER. Yes, I think you can do that where the situation is completely changed.

Commissioner MAHAFFIE. It is obvious you and Mr. Eisen disagree about that. What about the matter, if you should have two rights on this one operation, as Mr. Eisen said.

Mr. FOSTER. The background of that is that the T. J. McCarthy Steamship Company is a Michigan corporation. At the time Mr. McCarthy acquired the Tremaine and Ingalls, the person from whom he acquired them advised that he have a Del-
471 aware corporation. He did that. He has no thought of selling any rights to anybody.

Commissioner MAHAFFIE. He would not want but one right, would he?

Mr. FOSTER. If it can be worked out, the tax feature, and everything. He only wants one right. He is not here trying to seek two rights with the idea of going out and peddling one of them. If he gets the right, he can work out a charter arrangement some way and work on one certificate.

Commissioner MAHAFFIE. May your application be now considered modified to the extent you are now asking one right?

Mr. FOSTER. Yes, with the idea we would like from certain tax angles to figure out just how we want it.

Commissioner MAHAFFIE. You will have to figure that out later and suggest which.

Mr. FOSTER. And suggest which of the companies have that right. We are certainly not asking for two rights, with any idea of peddling operating rights. It can be worked out on one, and, as a matter of fact, it will be, because the mortages are now paid off on all the ships.

Commissioner PORTER. These cases are submitted and will be taken under advisement by the Division. The Division is now adjourned.

(Whereupon the above arguments were concluded, the cases submitted and the Division adjourned at 10:55 o'clock a. m.)

472 BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. W-592

APPLICATION OF T. J. MCCARTHY STEAMSHIP COMPANY FOR A CERTIFICATE TO OPERATE AS A COMMON CARRIER IN THE TRANSPORTATION OF PROPERTY BETWEEN PORTS ON THE GREAT LAKES

Docket No. W-729

AUTOMOTIVE TRADES STEAMSHIP COMPANY (APPLICATION TO OPERATE AS A COMMON CARRIER BY WATER)

FORT SHELBY HOTEL,
Detroit, Michigan, June 4, 1943.

Met, pursuant to notice, at 9:30 o'clock, a. m.
Before J. P. MCGRATH, Examiner.

Appearances

As before, and the following additional appearances:

W. E. Emblidge, 223 Erie Street, Buffalo, New York, appearing for Great Lakes Transit Corporation. J. M. Arnold, Detroit, Michigan, appearing for Detroit and Cleveland Navigation Co.

473 PROCEEDINGS

Exam. MCGRATH. Come to order, please, gentlemen.

The Interstate Commerce Commission has assigned for rehearing at this time and place Docket No. W-592, T. J. McCarthy Steamship Company, common carrier application, and Docket No. W-729, Automotive Trades Steamship Company, common carrier application.

Oral appearance will be received at this time only of those persons who have not heretofore entered appearances in these proceedings. Are there any such appearances to be entered?

Mr. SULLIVAN. There will be just one, your Honor.

Exam. MCGRATH. All right.

Mr. SULLIVAN. W. E. Emblidge, vice president, Great Lakes Transit Corporation, 223 Erie Street, Buffalo, New York, ap-

pearing for Great Lakes Transit Corporation. My own appearance was put in before. I understand you are not receiving duplicate appearances at this time.

Exam. McGRATH. No. Are applicants ready to proceed?

Mr. FOSTER. Yes, sir.

Exam. McGRATH. You may call your first witness.

Mr. FOSTER. Mr. McCarthy.

Exam. McGRATH. You have been previously sworn and testified in these proceedings, have you not, Mr. McCarthy?

Mr. McCARTHY. Yes.

Exam. McGRATH. You understand that the oath which
474 you took at that time, still applies.

Mr. McCARTHY. Yes, sir.

Exam. McGRATH. All right.

TIMOTHY J. McCARTHY recalled.

Direct Examination by Mr. FOSTER:

Q. Your full name is Timothy J. McCarthy?

A. Yes, sir.

Q. Your position with the applicants herein, T. J. McCarthy Steamship Company and Automotive Trades Steamship Company?

A. President.

Q. Of both companies?

A. Yes, sir.

Q. You signed the petition for reconsideration and rehearing on behalf of the applicants in these proceedings, did you not?

A. Yes.

Q. I will ask you, Mr. McCarthy, whether or not these companies have transported automobiles on the Great Lakes since the last hearing in this case in February of 1942.

A. Yes, sir; all of the vessels have carried automobiles between Detroit and Buffalo.

Q. Will you give us the circumstances, please, under which they have transported such automobiles?

A. We had had two or three calls from different army transportation agencies and army officers, asking us if we could
475 transport automobiles from Detroit to Buffalo on the decks of our vessels, and we assured them that we could, and we put in rates to handle automobiles in connection with deckloads of cars, or in the form of deckloads, on vessels downbound from the head of the lakes with grain for Buffalo.

Q. Now following the hearing in February of 1942, what if any physical changes were made in the vessels owned by these companies?

A. At the request of the Office of Defense Transportation—we had been asked that we be prepared to carry iron ore for the season of 1943—or it was indicated that we might be asked to carry iron ore for the season of 1943, so that we did take out a lot of structure which was left in the boats, in the way of between-decks elevators and so forth, and rebuilt bulkheads so that we could carry iron ore for the season of 1943 if we should be called upon to do so.

Q. And following the hearing in February of 1942, were the vessels changed to any extent so that they might be able to transport grain?

A. Yes, sir, they were. There was considerable work put in which would facilitate the handling of grain. They had carried grain all during 1942, but this additional work was to make it so that they could carry it handier and better.

Q. Were the changes which were made in the boats in the spring of 1942 likewise at the suggestion of ODT?

476 A. In the spring of '42?

Q. Yes.

A. I don't believe that we had a direct request from the ODT in 1942; no, sir; to change the vessels over, but recognizing the fact that there would not be any automobiles to ship, and in order to have our vessels ready to carry something, we felt that there would be a use for the vessels in the bulk trade, and so we removed a lot of the between-decks planking, and so forth, which was originally installed to make those vessels automobile carriers, so as to make them available to carry grain for the year of 1942.

Q. When you refer to automobiles, do you mean auotmobiles for civilian use?

A. No, sir—well, I beg your pardon. The manufacturer of automobiles for civilian use stopped in the early part of December of 1941, or January 1942, so that there were no more automobiles manufactured for civilian use after that time.

Q. I will ask you whether or not there have been motor vehicles in large numbers manufactured for government or army or military use?

A. Yes, sir; there has been an immense amount of ambulances, reconnaissance cars, weapon carriers, and so forth, various motor vehicles of that sort, manufactured for military purposes.

Q. And they are largely manufactured by the same people who formerly manufactured pleasure automobiles; is that correct?

477 A. Yes.

Q. Did you have any discussion with the representatives

of the army at the time they called upon you to transport these automobiles in 1942?

A. Yes.

Q. What were those discussions?

A. We were asked at that time by Lieutenant Draper, now Captain Draper, if we could handle some of these automobiles to Buffalo, and we told him that we could, on the decks of our vessels, as they passed Detroit downbound loaded with grain for Buffalo. He advised me that they had quite a large volume to move, and that there were not sufficient vessels to move them—or that there were not sufficient facilities, rather, to move them, by boat or otherwise; and for that reason he asked us to participate in the movement; and we told him that we would.

By Exam. McGRATH:

Q. From what ports to what ports?

A. From the port of Detroit, Michigan, to Buffalo, New York. That was the only place that we could have automobiles. The nature of the movement of grain is such that those would be the only ports where we could handle them. The destination port always was Buffalo, in the case of the grain.

By Mr. FOSTER:

Q. You had no vessels into Cleveland with grain on direct regular runs at that time, did you?

A. No, sir.

Q. And you did handle about how many carloads of
478 these automobiles on the decks of your vessels?

A. I think it was about 12, but the total number of cars was 950—or the total number of army vehicles, rather, I mean to say, was 950.

Q. Now, about what is the normal turnaround, on the average, from the head of the lakes to Buffalo and return, when engaged in the grain traffic?

A. Approximately ten days.

Q. Ten days?

A. Yes, sir.

Q. So that, with three vessels, you would have three vessels during approximately each ten-day period?

A. Yes, sir.

By Exam. McGRATH:

Q. Well, is that the fact, that you did operate three vessels during that season?

A. All during the season of 1942; yes, sir; and we are so operating them in 1943, in the bulk trade, at the present time, mostly carrying grain.

By Mr. FOSTER:

Q. And those are the same three vessels which have been mentioned in the earlier testimony here, are they not?

A. Yes, sir.

Q. The George W. Mead, the T. J. McCarthy, and the George H. Ingalls.

A. Yes, sir.

Q. And those three vessels are all owned free and clear
479 by the applicants in this case; is that correct?

A. Yes, sir.

Q. Now who requested you last fall to have the two larger of those three ships, that is, the McCarthy and the Ingalls, prepared to carry iron ore during the season of 1943?

A. Mr. A. T. Wood, director of the Great Lakes Division of the Office of Defense Transportation, at Cleveland, Ohio.

Q. And following that suggestion did you actually go ahead and prepare those vessels for the transportation of iron ore?

A. Yes.

Q. Will you please explain to the Commission just what it was necessary to do, in order to have those vessels made ready for the iron ore trade?

A. Well, we had to take out all of the center stanchions in the vessels; we had to take out the deck beams, that we had left in there from the previous year, which were not in the way when handling grain, but which would be in the way in handling iron ore; we had to remove the elevators, which would be in the way in loading ore, but which again were not in the way when loading grain; and we had to strengthen and renew the bulkheads, two in each vessel, as required by the American Bureau of Shipping, the Classification Agency for the examination of vessels on the Great Lakes.

Q. Now, what if any preparations have you made to reconvert these ships to the automobile trade, following the present
480 emergency?

A. We have saved all of the steel, the elevators, the elevator engines, the fans and ventilating equipment,—as a matter of fact, all of the equipment that we originally put into the vessels to make them into automobile carriers, at the time they were originally used as bulk vessels. That is, we had to put in all of this equipment to make them automobile carriers at the time we got them. Now the ships are practically in the same condition that they were in originally, in 1936.

By Exam. MCGRATH:

Q. And not adapted, therefore, for the carriage of motor vehicles?

A. Not adapted for the carriage of automobiles below decks, no, sir, but on deck, it is perfectly all right, and that is where we carried them last year, when we handled them.

By Mr. FOSTER:

Q. Now, approximately how many automobiles are you able to transport on the decks of these vessels at one time?

A. We could carry at one time about 125 automobiles on the decks of two of the vessels, and about 90 on the decks of the others.

Q. With their present construction, what is the deck capacity of the ships?

A. About 80 vehicles per ship, depending on the size, of course.

Q. Up until the passage of the 1940 Transportation Act it was quite customary to transport automobiles on the decks of freighters, was it not?

A. Yes.

481 By Exam. MCGRATH:

Q. Just for the record, Mr. McCarthy, when you refer to freighters, what do you mean?

By Mr. MCCARTHY:

A. Freighters, Mr. Examiner, are——

Mr. SULLIVAN, Bulk carriers?

A. Bulk carriers, rather than passenger vessels. The two classifications really are freighters and bulkers; and then there are automobile boats that were originally bulkers, but by reason of conversion they became automobile boats. Freighters are boats with one hold, and probably two or three compartments, and open hatches on the top, that are used generally in the transportation of bulk commodities.

By Exam. MCGRATH:

Q. In what part of the vessel would automobiles be transported, in a vessel of that type—the bulker vessel?

A. On the deck, when she is strictly a bulker; that is, on the spar deck, or the top deck. They never put any below decks.

By Mr. FOSTER:

Q. Now, the construction of the conventional type of vessel used on the Great Lakes, the conventional bulk type of vessel, is that the engines are aft; is that correct?

A. Yes.

Q. And the pilot house, and the crew's quarters, for the deck crew, are forward; is that correct?

A. Yes, sir.

Q. And that leaves a long open space between the coal bunkers aft, and the pilot house forward?

482 A. Yes, sir.

Q. Without any interference at all?

A. That is right.

Q. Have you received any recent inquiries concerning the transportation of motor vehicles for the present season, Mr. McCarthy?

A. Yes, sir, I have, twice, last week.

Q. From whom were those inquiries received?

A. One of them was from Major Stutz, of the Army Ordnance Division, or the Transportation Section—I don't just know what the correct title would be, but the records are at Detroit; and the other inquiry was from one of the truckers who has contracts to haul for the government, and wanted to use the decks of our vessels between Detroit and Buffalo for the intermediate haul, they having through rates, and our rates applying in connection with trucking companies that are certified common carriers.

Q. And are you prepared at this time, or are your companies prepared at this time to engage in such transportation?

A. Yes.

Q. What do your figure to be your monthly capacity to transport motor vehicles between Detroit and Buffalo?

A. With a ten-day turnaround for each of our ships, it would give us three trips per month for each ship, or a total of nine trips per month, with an approximate capacity of 80 to 90 vehicles on each vessel, which would be from 640 to

483 720 total vehicles per month.

Q. Now under normal conditions—and by that I mean, under peacetime conditions—would it be possible to operate successfully any of these three vessels in the bulk trade?

A. No, sir, I don't believe that it would be. As a matter of fact the vessels, all of the vessels that were in the former automobile trade, were considered as being obsolete as far as bulk carrying was concerned in normal times. Also, there is the fact that the modern vessels will carry practically twice as much, twice the tonnage of the vessels that have been in the past used in the automobile trade. In other words, those vessels were more or less obsolete in the bulk trade; and with the recent building on the Great Lakes by the Maritime Commission of 16 large and more modern ships, that is going to mean that our vessels, vessels of the type of our vessels, would not be usable, or at least, would not be economical; you could not make a living on them, in other words, competing with vessels carrying twice the capacity.

Q. When you bought the McCarthy and the Ingalls, they were then lying idle at Buffalo, were they not?

A. Well, one of them was at Buffalo; yes, sir; and the other was at Cleveland; but they had been idle at that time for some two or three years, or perhaps more; I do not know just exactly how many.

Q. And you converted them into automobile carriers?

484 A. Yes, sir.

Mr. FOSTER. Mr. Reporter, Applicants' Exhibit No. 33 for identification, please.

(Applicants' Exhibit 33, Witness McCarthy, marked for identification.)

By Mr. FOSTER:

Q. Now, Mr. McCarthy, I show you what has been marked by the reporter as Applicants' Exhibit No. 33 for identification, and I will ask you to state briefly for the record what that is?

A. This is a copy of a letter from the War Shipping Administration office at Cleveland, Ohio, signed by Robert D. Smith, Regional Manager.

Q. Addressed to whom?

A. Addressed to the T. J. McCarthy Steamship Company.

Q. You received the original of that letter, did you?

A. Yes, sir.

Mr. FOSTER. At this time we wish to offer Applicants' Exhibit No. 33 for identification in evidence as Applicants' Exhibit No. 33.

Exam. MCGRATH. Without objection, the exhibit will be received and marked as Applicants' Exhibit No. 33.

(Applicants' Exhibit 33, Witness McCarthy, received in evidence.)

Mr. FOSTER. I will not read it, Mr. Examiner.

Exam. MCGRATH. No.

485 Mr. FOSTER. I take it that will not be necessary.

Exam. MCGRATH. That will not be necessary, no, because it is now a part of the record.

Mr. FOSTER. Yes.

By Mr. FOSTER:

Q. Now, Mr. McCarthy, since the hearing in February of 1942 has there been any substantial change in the situation on the Great Lakes with respect to vessels that were formerly engaged in the transportation of motor vehicles?

A. Yes, sir, there has been a very decided change. There are no vessels of what is known as the automobile type vessels left on the Great Lakes, engaged in the hauling of automobiles. Some of the vessels that were formerly hauling automobiles have been taken over by the government. Fourteen of them have gone down the Mississippi River—that is, vessels that were formerly

owned by the Great Lakes Transit Company have been taken over by the government, and moved down the Mississippi River; one Detroit & Cleveland freighter, the steamer Fitch, has also been taken over by the government; and one large passenger vessel of the D. & C., which carried automobiles and passengers, has also been taken over by the government. Five of the Nicholson Universal Steamship Company vessels—that is, that is the holding company; the vessels were Over-Lakes Freight Company vessels—have been bought by the Maritime Commission; and the last five are at the present time engaged in the bulk trade carrying bulk commodities.

486 Q. Do the applicants in this case publish rates on grain from the head of the lakes to Buffalo when transported along with automobiles?

A. Yes.

Q. And did they transport grain with automobiles in the case of those various cargoes which you have described as having transported last summer?

A. Yes.

Q. I will ask you, Mr. McCarthy, if it is not true that the ODT very stringently regulates at the present time all means of transportation on the Great Lakes except purely package freight?

A. Yes.

Q. The applicants in this case are prepared and ready at this time to transport motor vehicles not only from Detroit to Buffalo, but from Detroit to the head of the lakes; is that correct?

A. Yes, we could.

Q. From your discussions with representatives of the Ordnance Department of the United States Army, and the Motor Transport Service, is it your belief that there will be a need for this transportation during the coming season, or the present season?

A. Yes.

By Exam. McGRATH:

Q. From and to what ports?

A. Definitely, from Detroit to Buffalo, but not definitely from Detroit to the head of the lakes, although there is still a
487 possibility that there may be some of that traffic offered, as I was told just the other day.

By Mr. FOSTER:

Q. Now, Mr. McCarthy, I believe you testified earlier in the proceeding—and we do not want to be repetitious at all—that you have had a general knowledge of the transportation of automobiles over the Great Lakes for a good many years.

A. Yes.

Q. With the present facilities which are available or which could be made available within a reasonable time, I will ask you if the normal volume of automobiles which are moved in peacetimes could possibly be moved with those facilities if normal production was resumed?

A. No, sir, they could not possibly be handled.

Q. All 21 of the ships which are mentioned in applicants' Exhibit No. 33, either by name or indirectly, were formerly engaged in the transportation of automobiles on the Great Lakes to some extent; is that correct?

A. Yes, sir.

Q. And they comprised the very large majority, or the very large percentage of the vessels which are there indicated; is that correct?

A. Yes, sir.

Q. I will ask you, Mr. McCarthy, whether or not in your opinion, from your experience during the season of 1942, and from
488 your discussions with the representatives of the Army Transport Service, there is now a present and an immediate future need for the transportation of motor vehicles on the Great Lakes?

A. Yes, sir.

Mr. ELDRED. Just a moment, if the Examiner please. My name is Eldred, and I am a party of record in this proceeding. I do not mind this witness testifying to his own opinion, but when he brings in army officers, I would like to know definitely who they are, and what they had to say; and even then, I think that we are getting into a good deal of hearsay evidence here. But as I say, I am perfectly willing for the witness to testify to his own individual opinion, but when he purports to testify as to the opinion of somebody else, I am objecting to any such hearsay testimony.

Mr. FOSTER. I do not think that I asked Mr. McCarthy to testify to anything of that sort, your Honor.

Mr. ELDRED. If I understand the question correctly, counsel asked the question in such a way that that would be the effect of the answer of the witness.

Exam. MCGRATH. Read the question and answer, please, Mr. Reporter.

[Question and answer read.]

By Exam. MCGRATH:

Q. That is a statement of your opinion, is it, Mr. McCarthy?

A. Yes, sir.

489 Exam. MCGRATH. That was my understanding.

Mr. ELDRED. If that is the case, then, Mr. Examiner, I will withdraw my objection.

Exam. MCGRATH. All right.

Mr. FOSTER. Mr. Reporter, Applicants' Exhibit No. 34 for identification, please.

(Applicants' Exhibit 34, Witness, McCarthy, marked for identification.)

By Mr. FOSTER:

Q. Mr. McCarthy, I show you what has been marked by the reporter as Applicants' Exhibit No. 34 for identification, and I will ask you to state briefly for the record what that is?

A. This is the report—or a copy of the report of the Interstate Commerce Commission in Case 28162, or in Docket No. 28162, Nicholson Universal Steamship Company—ownership interest of New York Central Railroad in Nicholson Universal Steamship Company, decided May 10, 1943.

Q. Did you receive at your office the original of that decision?

A. Yes, sir.

Q. And Applicants' Exhibit No. 34 for identification, is a true and correct copy of that decision; is that correct?

A. Yes, sir.

Mr. FOSTER. At this time, Mr. Examiner, we wish to offer Applicants' Exhibit 34 for identification in evidence as Applicants' Exhibit 34.

490 Exam. MCGRATH. Is there any objection?

Mr. EISEN. May I inquire as to the relevancy of that decision in this proceeding, if the Examiner please? I am not making any objection to it. I would just like to know how it is tied up with this proceeding.

Mr. FOSTER. It definitely shows, if you are familiar with it, Mr. Eisen, that the Over-Lakes Freight Corporation and the Nicholson Universal Steamship Company have actually disposed of at least five of their ships, concerning which there was a great deal of testimony in the earlier record.

Mr. EISEN. Well, that is shown by the previous exhibit, No. 33, is it not?

Mr. FOSTER. Part of it is; yes.

Exam. MCGRATH. Is that the purpose of presenting this exhibit, counsel?

Mr. FOSTER. Part of the purpose.

Exam. MCGRATH. What is the other part of the purpose?

Mr. FOSTER. That is the main purpose.

Exam. MCGRATH. Well, does it have any other purpose?

Mr. FOSTER. That is the principal purpose of the offer of the exhibit, your Honor.

Mr. EISEN. We will admit, Mr. Examiner, that those five boats have been acquired by the government—or that the title to those five boats have been acquired by the government.

Exam. MCGRATH. The exhibit will be received in evi-
491 dence and marked as Applicants' Exhibit No. 34.

(Applicants' Exhibit 34, Witness McCarthy, received in evidence.)

By Mr. FOSTER:

Q. Now, Mr. McCarthy, these vessels, that is, the vessels of the applicants, rather, would have substantially the same capacity to transport automobiles upbound to the head of the lakes as they would to the lower lake ports, would they not?

Mr. ELDRED. Just a moment. May I hear that question again, please, Mr. Reporter.

(Question read.)

Mr. ELDRED. I suggest, Mr. Examiner, that that question is a little bit leading.

Exam. MCGRATH. Yes.

Mr. ELDRED. As most of the other questions have been.

By Mr. FOSTER:

Q. Well, then, Mr. McCarthy, I will ask you as to whether or not your vessels would have the same capacity, the same weekly or monthly capacity to transport automobiles from Detroit to the head of the lakes, as they would from Detroit to the lower lake ports?

Mr. EISEN. Just a moment. I object to that question. The only thing that we have involved here is an operation from Detroit to Buffalo, as I understand it.

Mr. FOSTER. Oh, no, very decidedly not, if the Examiner please. This is an application, based upon convenience and
492 necessity.

Mr. ELDRED. May I inquire at this time, if the Examiner please, just so that the record will be perfectly clear: what is the application for, that is here under consideration in this proceeding?

Mr. FOSTER. It is an application to transport automobiles on the Great Lakes.

Mr. EISEN. My recollection of the application here under consideration is that it is an application to continue an interim operating right.

Mr. FOSTER. Oh, No.

Mr. EISEN. And that it was so conceded by Mr. Foster at the oral argument.

Mr. FOSTER. Oh, no.

Mr. EISEN. Well, I will stand on the record. I think that the record will bear me out.

Exam. McGRATH. Well, Mr. Foster, do you desire to make your position any more definite than you have up to the present time?

Mr. FOSTER. Why, I do not see how I very well can, your Honor. It is simply an application, based on convenience and necessity, for the transportation of automobiles on the Great Lakes.

Exam. McGRATH. From and to all ports on the Great Lakes?

Mr. FOSTER. That is correct, yes, sir,—with the exception of Chicago.

493

Mr. ELDRED. Well, now, if the Examiner please, in the report of the Commission, by Division 4, decided November 25, 1942, in the second paragraph of that report, it says: "By separate applications filed May 31, 1941, and as amended October 18, 1941, the T. J. McCarthy Steamship Company and Automotive Trades Steamship Company, hereinafter referred to as the McCarthy Company and the Automotive Company respectively, of Detroit, Michigan, seek a certificate of public convenience and necessity under the provisions of Section 309 (a) and 309 (c) of the Interstate Commerce Act, authorizing operation as a common carrier by water, in interstate or foreign commerce, in the transportation of motor vehicles, as described in the footnote, between Detroit on the one hand, and Cleveland, Ohio, Buffalo, New York, and Erie, Pennsylvania, on the other hand, and between Buffalo and Cleveland."

Exam. McGRATH. Read on.

Mr. ELDRED. "On oral argument applicants indicated that they desired authority to serve other points on the Great Lakes such as Duluth, Minnesota."

Mr. EISEN. My recollection of the oral argument, if the Examiner please, is that the question was specifically propounded, and the answer made in connection with Mr. Foster's discussion of the bulk cargo need of automobiles. On page 374 of the record of the oral argument, Mr. Commissioner Mahaffie

494

asked Mr. Foster, "Do you approve of it on the continuance of the interim operation?" Mr. Foster specifically said, "It is an interim application."

Mr. FOSTER. What page is that?

Mr. EISEN. Page 374. Mr. Foster specifically admitted that he had filed an interim operating application.

Mr. FOSTER. One page 376—or rather, I should say, page 375, Commissioner Mahaffie, asked "You contend that on the interim application we should consider the convenience and necessity as though it were a new operation?" To which I replied, "Yes. I think you have an absolute right to do it. You have done it in other cases where the situation changes. I certainly do not think

that where the applicant has shown he is ready, willing and able to perform where they say this service is absolutely needed, that the application should be thrown out on a pure technicality.

"Com. MAHAFFIE. You think we should disregard the fact, if it be a fact, that you were not operating on the interim date?

"Mr. FOSTER. Yes; I think you can do that where the situation is completely changed.

"Com. MAHAFFIE. It is obvious you and Mr. Eisen disagree about that. What about the matter, if you should have two rights on this one operation, as Mr. Eisen said?"

And again, we discussed that. Then earlier in the oral
495 argument in response, I believe, to a question by Mr. Eldred, we stated that we were not asking for Chicago because automobiles had not moved there for a number of years.

Mr. EISEN. The fact remains, however, Mr. Foster, that you did admit, as shown by the record, that it is an interim operating application. You did not deny it at that time, although you deny it now.

Mr. FOSTER. No, we denied it at that time, and stated that they had the right to consider convenience and necessity——

Mr. EISEN. No; you did not.

Mr. FOSTER. Under the changed conditions.

Mr. EISEN. The question involved is not the question of whether you can prove convenience and necessity right now. The question is merely as to whether it is an interim operating application or not. I think that the record very definitely shows that Mr. Foster admitted to the Commission that it is an interim operating application. Now, that is the only question that is involved, and not the question of what proof he may submit under it.

Exam. MCGRATH. Well, what is the essential difference between an interim operating application, and an application for authority anew?

Mr. FOSTER. I do not think there is any.

Exam. MCGRATH. That is an application for a new operation.

496 Mr. FOSTER. I do not think there is any.

Exam. MCGRATH. What is the basic essential difference?

Mr. EISEN. There are three different forms of application, Mr. Examiner. One is the grandfather form; another is the interim application; and the third is for a new operation.

Exam. MCGRATH. Oh, yes; I understand that, but I say, what is the essential difference between the last two—or what are the essential differences?

Mr. EISEN. Under an interim operating application——

Exam. McGRATH. It is necessary to prove convenience and necessity, is it not?

Mr. EISEN. To continue the interim operation.

Exam. McGRATH. Yes.

Mr. EISEN. Well, now, Mr. Foster does not contend, as I understand it, that during the interim period the McCarthy Steamship Company has carried automobiles to the head of the lakes.

Mr. ELDRED. The entire application, if I understand it correctly, is one that seeks to continue something that you are doing, and not involving something that you propose to do.

Mr. EISEN. Essentially.

Mr. ELDRED. This application was definitely amended at the hearing on October 18, 1941.

Mr. FOSTER. Right.

Mr. ELDRED. It was definitely amended, to a certain pre-
497 scribed area.

Exam. McGRATH. Are you amending the application again, now, counsel, to make it the equivalent of an application for a new operation?

Mr. FOSTER. I think that we so amended it at the hearing back in February of 1942.

Exam. McGRATH. And it is to be so understood here now, is it?

Mr. FOSTER. Yes, sir; that is correct. I think it was so amended, back at that time.

Mr. EISEN. And in October, 1942, when the oral argument was had, it was definitely determined at that time that it was an interim operating application—as indicated by pages 374 and 375 of the stenographic transcript.

Mr. ELDRED. I do not understand, Mr. Examiner, how the application can be amended at this late date.

Mr. FOSTER. The gentlemen are laboring under a misapprehension. We are not asking for any further amendment.

Mr. EISEN. Well, as far as the record itself is concerned, up to the present time, it indicates that Mr. Foster has admitted that it is an interim operating application.

Exam. McGRATH. Now, just a moment. Let us understand first: what is the situation with respect to the grandfather feature of the application?

Mr. FOSTER. As to the grandfather feature——

498 Exam. McGRATH. Have you abandoned that?

Mr. FOSTER. Yes; Mr. Examiner, that has been abandoned, and it now rests upon convenience and necessity.

Exam. McGRATH. Very well. Now then, let us get it definitely on the record as to just what you are asking for in this proceeding. What ports are you seeking authority to serve—specifically, now?

Mr. FOSTER. We are seeking authority to serve from Buffalo, New York, to Duluth, Minnesota, and Lake Michigan ports as far south as Milwaukee, Wisconsin.

Mr. EISEN. From Buffalo?

Mr. ELDRED. Yes; that is what he said. I would like to say this at this time, if the Examiner please, that I have never objected to the amendment of a grandfather application at the hearing, where there has been an omission; but I must very vigorously object to the broadening of the scope of this application, which is under consideration here upon rehearing, and which was very definitely settled and agreed to by the applicants at the previous hearing. There has been no notice to any one that the scope of this application was to be broadened.

Mr. EISEN. Of course, Mr. Examiner, we would also object to any broadening of the scope of the application at this time, but we do no necessarily press for a ruling right here and now by the examiner, if it is not desired to give such a ruling.

Exam. MCGRATH. Well, all that I am trying to do just
498 at the present moment is to get the views of Mr. Foster on the record, as to just what he considers the application to cover.

Mr. FOSTER. Well if your Honor please, it is our position that prior to the time the amended application was filed, the entire situation has changed. The testimony presented at the hearing on February 13, 1942, was on the basis of general convenience, or convenience and necessity primarily between Detroit and the Lake Erie ports, and Detroit and Duluth. On page 34 of the stenographic transcript of the oral argument before the Commission—

Mr. ELDRED. 34?

Exam. MCGRATH. You do not mean that.

Mr. FOSTER. Or rather, I mean to say, page 349. The 9 does not show up in my copy, here.

Mr. ELDRED. I have never understood, if the Examiner please, that you could change the scope of an application upon oral argument.

Mr. FOSTER. Well, we had filed under the grandfather clause for exactly this same territory that was discussed, and we simply amended the application at the commencement of the previous hearing. The routes are shown in Exhibit No. 20 as confined to Automotive Trades.

Exam. MCGRATH. Well now, is it clear to everyone as to what the position of the applicants is, here?

Mr. ELDRED. No; Mr. Examiner; it certainly is not clear
500 to me, as yet.

Mr. EISEN. No.

Exam. McGRATH. The reporter will go back, please, and read the last statement made by Mr. Foster.

(The record was read.)

Mr. FOSTER. And furthermore, Mr. Examiner, we made our position clear on page 449 of the stenographic record of the argument.

Mr. SULLIVAN. 349, you mean, do you not?

Mr. FOSTER. Or rather, I mean to say, on page 349, before the Commission on October 30th last.

Exam. McGRATH. Well, before that, you undertook to be more specific, Mr. Foster. Will you go back and read that also, please, Mr. Reporter.

(The record was further read.)

Mr. ELDRED. Well, now, Mr. Examiner, may we also get straight here with respect to whether we are proceeding at this time under the grandfather application, or under the interim application?

Exam. McGRATH. Off the record.

(Discussion outside the record.)

Exam. McGRATH. Back on the record.

Mr. ELDRED. May counsel answer my question now, if the Examiner please?

Exam. McGRATH. Yes.

501 Mr. FOSTER. We are proceeding at this time under the amendment, the amended application, and not the grandfather application.

Mr. EISEN. He has withdrawn the grandfather application.

Exam. McGRATH. He has abandoned it, he said.

Mr. EISEN. Yes.

Mr. ELDRED. Well, yes; I understand that, but one thing at a time, now. If the grandfather application has been withdrawn——

Mr. FOSTER. That application is still on file, of course, you understand, but we are not pushing it.

Mr. ELDRED. You are not pressing it.

Mr. FOSTER. No.

Mr. ELDRED. All right. In this proceeding today, then, we are proceeding under the public convenience and necessity application, which was an application for authority to continue operations which you started since January 1, 1942.

Mr. FOSTER. Oh, no; I will not admit any such narrow construction of the amended application which was filed on a particular form which was provided by the Bureau of Water Carriers. The applications in a sense are exactly the same. You have got to set forth the same facts as to financial status, and everything else; and I am not saying that because it was on that particular form, it is an interim application. It is an application based on public convenience and necessity.

502 Mr. Eldred. If the Examiner please, I note, in th amendment to the original application, on page 2, unde Description of Routes, it states: "Between Detroit, Michigan, an Cleveland, Ohio, Detroit, Michigan, and Buffalo, New York, an between Buffalo, New York, and Cleveland, Ohio." I see nothin in there about any other ports at all.

Mr. Foster. Exhibit 20 covers the other ports, your Honor, I stated before.

Exam. McGrath. What other ports do you mean, now; othe ports on Lake Erie?

Mr. Foster. No; Duluth, primarily.

Exam. McGrath. Well, what is the position of the oppositio now—that there is no issue before us here with respect t Duluth

Mr. Eldred. Right.

Exam. McGrath. Is that the position?

Mr. Eldred. That is correct, Mr. Examiner. The applicatio as filed with the Commission, plainly states the territory involve

Mr. Eisen. Mr. Examiner, my understanding of an applicatio or any other pleading in a proceeding such as this, or in any leg proceeding, is that it is supposed to clearly define the issue and that all parties are bound by such pleadings. Now th Commission has already found in its decision as to wha 503 the applicants have asked for in their application. says that, right on the first page, in the first paragraph of the decision. Now I do not understand that it is proper o permissible for an applicant to come into a hearing of this so and endeavor to broaden the scope of the authority sough merely by making the statement that that is what he desire without giving appropriate notice to all interested parties, with out notifying the Commission and the other parties through th medium of an appropriate application.

Exam. McGrath. Well, I do not think that it would b broadening the scope of the application, to include Duluth.

Mr. Eldred. O, yes; indeed, Mr. Examiner. It would be en tirely different operation, over a different lake, and covering different territory.

Mr. Foster. The application, if your Honor please, wa amended to cover irregular routes without any objection, wit all of these gentlemen present, I believe, with the possible excep tion of Mr. Sullivan, as indicated by page 116 of the stenographi transcript—or page 117.

Mr. Lewis. I was not present.

Mr. Foster. You were not present?

Mr. Lewis. No; I was not—do you mean, at Chicago?

Mr. Foster. No. I am talking now about the original hearing

Mr. LEWIS. Oh!

Mr. FOSTER. On February 13, 1942.

504 Mr. LEWIS. No; I was not there; I was not at the original hearing.

Mr. FOSTER. But you were at the adjourned hearing; you were here?

Mr. LEWIS. Was I?

Mr. FOSTER. Yes.

Mr. LEWIS. At the adjourned hearing?

Mr. FOSTER. Yes.

Mr. LEWIS. That may be true.

Mr. EISEN. Well, Mr. Examiner, that was an amendment specifically amending the grandfather application; and if you will note on pages 117 and 118 of the stenographic transcript, you will observe that Mr. Eldred said exactly what he did today, that he never objects to the extension of a grandfather application; and I believe that we all of us felt the same way, that if the applicant could prove grandfather rights, we would have no objection to any territory within the scope of his grandfather rights because the statute specifically grants that guarantee to an operator, of the continuance of operations that were conducted on the grandfather date. But what is being done here today, now, or what is being sought to be done here, is something entirely different, and that is to enlarge the scope of a public convenience and necessity application as a new application. I think that the record itself, and the application itself, are ample in and of themselves to dispose of that
505 matter. I do not see any need for us to further argue it here.

Mr. SULLIVAN. Your Honor, I am just raising the point of fundamental right, in the matter of procedure, which requires, in the case of these applications, a form of notice to be sent to the parties named in the application. The notice that I have before me here purports to cover the traffic intended to be sought by the applicants. The ports named are the same as those read off by Mr. Eldred, from the application.

Mr. ELDRED. The decision.

Mr. SULLIVAN. Or, the decision. There is no reference to any port outside Lake Erie, other than Detroit.

Mr. FOSTER. May I inquire if that is the original notice, or the notice that was sent out in connection with the amended application?

Mr. SULLIVAN. That, I am told by Mr. Eisen, was sent out in connection with the amended application, although I may have to stand corrected on that, if the warrants it; but Mr. Eisen

tells me that this is the one that went out originally, in connection with the amended application.

Mr. Foster. What is the date?

Mr. Sullivan. There is no date on it. That is why I cannot be any more dogmatic about it.

Exam. McGrath. Off the record.

(Discussion outside the record.)

Exam. McGrath. Back on the record. I will say at this
506 point, gentlemen, that the Examiner is of the view that the objections raised by the gentlemen on the other side here, seem to be unsound, so far as the Examiner's understanding of the applications is concerned. However, Mr. Foster, you may proceed to present your testimony as you have prepared it, and also develop, if you can, the fact that the application has the scope which you are contending it has—that is, as between Detroit and Duluth.

Mr. Foster. Well, if the application does not have that scope, we wish at this time, if the Examiner please, to move formally that it be amended to have that scope, for the transportation of commodities, including automobiles, between Detroit, Michigan, and Lake Erie ports, and Detroit, Michigan, and Lake Superior ports.

Mr. Eisen. Well now, I am certainly going to object, Mr. Examiner, to any amendment to the application being permitted to be made at this time, to change its scope from that which it had when it was originally filed. Exhibit No. 27 now of record—I believe that is the correct number of the exhibit—specifically shows the commodities that the applicant handled in the past; and I think, under your own questioning, the record clearly shows the specific commodities that were so handled in the past. Those were the only commodities that were covered by the grandfather application. That was the only proof that they submitted, and
507 the Commission has ruled on that particular transportation as being exempt transportation, as shown by the testimony in this record. Now if the applicant has changed its method or scope of operation since that date, it falls into the category discussed by the United States Supreme Court in the Maher case, and it cannot be considered under a grandfather application.

Mr. Foster. We are not considering it under the grandfather application.

Mr. Eldred. Well, if the Examiner please, if an applicant is going to be permitted to come in at the hearing with a new service application, and broaden the scope of its application, why, then certainly the protestants are never going to know where they are. A great many carriers will not appear, and then later they will

find out that they have a vital interest in the application. I have never yet been in an application proceeding, involving an application for new service, where the broadening of an application such as this has been permitted.

Mr. Foster. You say, at the hearing.

Mr. Eldred. Right.

Exam. McGrath. Well, the Examiner has stated his position. Will you read the statement made by the Examiner again, please, Mr. Reporter.

(The record was read.)

Exam. McGrath. It has not been made clear as yet to the Examiner that the original application, as amended, relates to
508 the transportation of automobiles between Detroit, Michigan, and Duluth, Minnesota, or other ports on Lake Superior.

Mr. Foster. It related to the transportation of other commodities.

Exam. McGrath. Yes.

Mr. Foster. Not automobiles.

Exam. McGrath. Yes, and as the Examiner understands it, the present proceeding relates entirely, or primarily at least, I will say, to the transportation of automobiles, or motor vehicles.

Mr. Foster. And other commodities.

Exam. McGrath. And other commodities?

Mr. Foster. Yes.

Mr. Eisen. Well then, may I inquire, do I correctly understand——

Exam. McGrath. Just a minute.

Mr. Eisen. Pardon me.

Exam. McGrath. What other commodities, counsel?

Mr. Foster. Well, such as furniture, for example, when transported with automobiles, or any other commodity when transported with automobiles; anything that is covered, that is not a wholly exempt commodity.

Exam. McGrath. I see.

Mr. Sullivan. What about package freight?

Mr. Foster. Package freight as such we are not claiming.

509 Mr. Eldred. Now, if the Examiner please, may I call your attention to Exhibit B-1 to the amended application, which purports to show the commodities which are asked for; and the only commodities which are mentioned there are motor vehicles.

Mr. Eisen. Under the interim or public convenience and necessity application.

Mr. Eldred. Yes.

Mr. EISEN. And I understood that was the only thing that wa to be considered here today, in view of Mr. Foster's own state ment that he is not pressing the grandfather rights here today.

Exam. MCGRATH. Do you have anything further that you wis to say on that point, Mr. Foster?

Mr. FOSTER. No.

Exam. MCGRATH. Are there any further questions of Mr McCarthy?

Mr. FOSTER. Yes. What is the state of the record, please, Mr Reporter? Is there a question pending, or what?

(Question read.)

A. Yes, sir.

By Mr. FOSTER:

Q. Now, Mr. McCarthy, I will ask you whether or not thes companies are presently operating under temporary authority i the transportation of motor vehicles and grain when transporte on the same vessel at the same time.

A. Yes, sir.

510 Q. And they have been so operating since last summer is that correct?

A. Yes, sir.

Mr. FOSTER. I believe that is all.

Exam. MCGRATH. Cross-examine.

Mr. EISEN. I have just two questions, if the Examiner pleas to clarify the change in the situation of the applicants as betwee today, and the same time of the last hearing, if I may.

Cross-examination by Mr. EISEN:

Q. Mr. McCarthy, on page 51 of the record the Examiner aske you the following questions, to which you made the followin answers:

"Q. Mr. McCarthy, you have testified that all your vessels hav been refitted for the carriage of automobiles.

"A. That is right.

"Q. I take it from that, that they are not suitable for carryin bulk cargoes.

"A. No, not without some reconverting of them back to thei original condition."

Now I want to ask you this question: there has been a chang in that situation to the extent that your boats are now bulk carg boats, and cannot carry automobiles as heretofore unless the are reconverted back; is that right?

A. Except on the top deck.

511 Q. Oh, yes.

A. Yes, sir.

Q. But there has been that change.

A. Yes, sir.

Q. All right. Now on pages 189 and 190 of the record Mr. Foster asked you—I presume referring to your operations other than in the transportation of automobiles—"In other words, you were operating that vessel about as nearly as one could as a tramp steamer?" Then there was an objection, and you said, "Yes."

A. What vessel was that?

Q. The vessel that you were transporting bulk freight in.

A. Oh, yes.

Q. That is correct, is it not?

A. Yes, sir. That was the Ingalls.

Q. And then on page 190 of the transcript, you defined a tramp steamer as follows: "A tramp steamer would be—you call a tramp steamer one that is not assigned to any port, to any particular and definite trade, working particularly for one shipper or one or two shippers, but you might even get horse manure if you got the right rate and carry it and be glad to have it, or stones, or bulk commodities suitable for dropping into open hatches and lifting out again. As a matter of fact, you could carry steel on that boat, package steel, but there was none offered and we couldn't get any."

Now, is your operation at the present time other than
512 automobiles any different from that?

A. We are operating at the present time more or less under the ODT.

Q. I understand, but——

A. (Continuing.) And our commodities, the commodities that we carry, have got to be approved by the ODT, or at least have got to be regulated by the.

Q. Well, other than by reason of any ODT regulations, are you operating any differently? In other words, are you assigning steamers to any particular port, or operating a regular run on schedules?

A. We go by Detroit with a shipment for Buffalo.

Q. You go by Detroit?

A. Yes, sir; and we stop here if there are automobiles to be picked up and taken on to Buffalo.

Q. But you still run your irregular so-called tramp service, do you not?

A. Wherever there is grain, at whatever port the grain originates, on to whatever destination it is assigned; but it is not perhaps as broad, as to the "tramp" end of it, as was originally asked, at that time.

Q. The only difference, then, is the difference that may be necessitated by the ODT regulations; is that correct?

A. Yes, sir.

Mr. EISEN. That is all.

513 By Exam. McGRATH:

Q. To what ports do you expect or contemplate handling automobiles in these vessels that have been converted for the handling of iron ore, or do you not intend to use them for that purpose?

A. Yes, sir. Up until the present time, the vessels that have been converted to carry ore—that is, two of the vessels that have been converted to carry ore are still in the grain trade, with the permission of the government authorities, and we can carry automobiles from Detroit to Buffalo on those ships.

Q. Carrying grain?

A. How?

Q. Carrying grain?

A. Yes, sir; or we could carry from Detroit to Duluth. We have rates in effect now, and have had since January of 1941.

By Mr. SULLIVAN:

Q. Rates on automobiles?

A. Yes.

Q. Only?

A. On automobiles only.

By Exam. McGRATH:

Q. Well, is it the purpose to use those vessels intensively this season for the carriage of ore?

A. Yes.

Q. Those two vessels that you have referred to?

A. If we are required to do so—whatever the ODT and the War Production Board insists on our doing.

Q. Well, would it be possible to say what ports those
514 vessels would be operated to, if they carried ore?

A. Duluth would be part of the ore shipments and part of the grain shipments, but there are more ports from which ore is shipped than from which grain is shipped. Could I add something?

Q. Go ahead.

A. There are two ports particularly where grain is shipped from, as far as Lake Superior is concerned, and they are Port Arthur and Duluth. There is some grain, of course, that is shipped from Lake Michigan ports, but we have not carried any of that this year, or last year either, except one cargo last year.

Mr. FOSTER. I think perhaps I can clear that up, if your Honor please, if I may ask Mr. McCARTHY just one question.

Exam. McGRATH. Go ahead.

By Mr. FOSTER:

Q. Both Cleveland, Ohio, and Buffalo, New York, are ore receiving ports; is that correct, Mr. McCarthy?

A. Yes.

Q. I will ask you to state whether or not, if you were certified as an ore carrier and required to carry ore, it would be possible for you to schedule your vessels to Buffalo and Cleveland, and to likewise carry automobiles on the decks of those vessels, along with the iron ore?

A. Yes, sir.

Q. The ODT permitting.

A. Yes, sir.

515 Mr. FOSTER. I think that clears it up.

By Exam. MCGRATH:

Q. But the ODT would have to pass on that?

A. Yes.

Q. That is, you would have to obtain permission from the ODT?

A. Yes.

Exam. MCGRATH. Are there any further questions on cross-examination?

Mr. ELDRED. Just one question.

By Mr. ELDRED:

Q. Mr. McCarthy, if you were transporting automobiles at the same time you were transporting ore, you would slow up your transportation of ore, would you not?

A. Yes, sir.

Mr. ELDRED. That is all.

Mr. EISEN. Just one more question, please.

By Mr. EISEN:

Q. Are any of the ore carriers, Mr. McCarthy, to your knowledge, carrying automobiles on their spar decks to Buffalo?

A. They are not permitted to do so at the present time, as I understand it.

Q. And none of them are?

A. No, sir.

Mr. EISEN. Thank you.

Exam. MCGRATH. Are there any further questions of the witness on cross-examination? (No response.) I have just a few questions to ask you, Mr. McCarthy, for the purpose of

516 clarification.

The WITNESSS. Yes, sir.

By Exam. MCGRATH:

Q. At the expense, possibly, of some repetition, Mr. McCarthy, I would like to ask you to make clear in the record as to the ports from and to which automobiles have been transported by the applicants since the last hearing.

A. Only from Detroit, Michigan, to Buffalo, New York.

Q. Now you spoke about the prospect of receiving some additional traffic this season from a common carrier trucker, as I understood it.

A. Yes, sir.

Q. You did not make that just entirely clear to me, as to what the nature of that traffic will be.

A. Army vehicles—the same kind of vehicles that the truckers pick up at the various automobile plants that make this army equipment, and transport it.

Q. Under its own power?

A. Pardon me?

Q. Do they transport it under its own power?

A. No, sir; on trailers.

Q. On trailers?

A. Yes, sir. There is some of it, that is, of course, that is transported under its own power by the drive-way method. They are a common carrier, and our rates are published in connection with the carrying of army vehicles with grain,
517 so that we can handle them with any certified public carrier.

Q. And from and to what ports do you propose to carry that traffic?

A. Detroit, Michigan, to Buffalo, New York, and destinations beyond.

Q. Detroit to Buffalo?

A. Yes, sir.

By Mr. FOSTER:

Q. For final destination beyond?

A. Yes.

By Exam. MCGRATH:

Q. Well, I am concerned here only with the water carriage.

A. I understand. What ports, you said?

Q. Yes.

A. Detroit to Buffalo.

Exam. MCGRATH. That is all I have. Are there any further questions of the witness on cross-examination? (No response.) Is there any redirect examination, Mr. Foster?

Mr. FOSTER. None.

Exam. MCGRATH. If not, you are excused, Mr. McCarthy.

The WITNESS. Thank you.

(Witness excused.)

Exam. MCGRATH. Call your next.

Mr. FOSTER. Mr. Brennan.

M. J. BRENNAN recalled.

518 Exam. MCGRATH. Mr. Brennan, you were sworn at the prior hearing, were you?

The WITNESS. Yes, sir.

Exam. MCGRATH. You understand that you are still testifying under that oath.

The WITNESS. Yes, sir.

Exam. MCGRATH. Go ahead.

Direct examination by Mr. FOSTER:

Q. Your name is M. J. Brennan?

A. Yes, sir.

Q. Mr. Brennan, are there a large number of motor vehicles of various types being manufactured at the present time by the automobile companies?

A. I can only speak for Chrysler. We are manufacturing trucks at the present time for the army.

Q. I take it, Mr. Brennan, you would not want to go into detail with respect to the type of trucks, or the valume, or anything of that sort, would you?

A. Oh, no.

Q. That being a military secret.

A. Right.

Q. But they are being manufactured?

A. That is correct.

Q. And they are, if the army so desires, available for water shipment; is that correct?

519 A. Yes, sir.

Q. Do you know of your own personal knowledge as to whether or not any of them were shipped by water last year?

A. Yes; there were some.

Q. Approximately how many?

A. Around 1,000.

By Exam. MCGRATH:

Q. Shipped on the Great Lakes?

A. Yes, sir.

By Mr. Foster:

Q. Where?

A. Between Detroit and Buffalo.

Q. Were some of the motor vehicles which the Automotive Trades Steamship Company shipped, manufactured by Chrysler?

A. Yes.

By Mr. EISEN:

Q. You mean, I take it, which were transported by the Automotive Trades Steamship Company.

A. Yes.

By Mr. FOSTER:

Q. You testified, Mr. Brennan, in the original case that in your judgment the service of the vessels of these applicants would be needed upon the resumption of normal operations on the Great Lakes, I believe; is that correct?

A. Yes, sir.

Q. Applicants' Exhibit No. 33, which was received in evidence here this morning, shows that since the time of the last hearing 19 of the vessels of the various protestants are no longer available for the transportation of automobiles, all of those
520 vessels having formerly been used in that service. Would you say that, with that condition existing, there will be a need for the service of the vessels of the applicants in this case?

A. Oh, very much so; yes, sir. It looks like it is going to be a very serious situation.

Q. In your judgment, Mr. Brennan, would that need include not only Lake Erie ports, but Lake Superior ports as well?

Mr. ELDRED. Now, if the Examiner please, I am going to object to that question. The scope of this application has been defined as being between Detroit and Lake Erie ports, and I therefore respectfully request that the testimony introduced in this proceeding, be confined to that particular territory.

Exam. MCGRATH. Making your answer apply to the Lake Erie ports, Mr. Brennan, what is your answer to that question?

The WITNESS. Give me the question again.

Mr. FOSTER. Read it, please.

(Question read.)

By Exam. MCGRATH:

Q. What is the fact as to the Lake Erie ports?

A. It would.

By Mr. FOSTER:

Q. It would include those?

A. Yes, sir.

Mr. FOSTER. Now, if the Examiner please, I also wish to go into Lake Superior. I think that the protestants have opened up the entire picture. Our amendment in the previous
521 hearing goes to the entire scope of operations on the Great Lakes; and our testimony as to the actual scope of operations on the Great Lakes, in the original hearing—or rather, at the adjourned hearing last February, went to everything except Lake Michigan and Lake Superior.

Exam. MCGRATH. Well, your testimony, Mr. Foster, as I recall it, with respect to lakes other than Lake Erie, related to commodities other than automobiles.

Mr. FOSTER. I am referring to the necessity for transporting automobiles to the other lakes.

Exam. MCGRATH. I understand, but the understanding of the Examiner is that the application is not of sufficient scope to embrace a request for authority to transport automobiles on Lake Superior.

Mr. FOSTER. I wish to make it very clear on the record, if the Examiner please, that it is our contention that the amendment at the February 13th, 1942, hearing did sufficiently broaden the application to include that, and protestants offered testimony, by reference, covering the entire scope of operations at that time, and did not raise this objection that they are raising here today.

Exam. MCGRATH. All right; you may answer the question, then, with that understanding.

A. Well, we definitely do ship to ports on Lake Superior and Lake Michigan, and we do need that service; and under
522 the presently existing conditions, with the number of boats that have been assigned to other services, we feel that there will be very definitely a lack of sufficient vessels to take care of the Lake Superior and Lake Michigan traffic.

By Exam. MCGRATH:

Q. During this coming season, do you mean——

A. No.

Q. Or this present season?

A. No, sir; I mean when we get back to the manufacturing and shipping of automobiles and trucks.

Q. For civilian use?

A. Yes.

Q. General civilian use.

A. That is correct.

By Mr. FOSTER:

Q. In your opinion, Mr. Brennan, is there a need for this transportation service even at the present time, with the limited present production of motor vehicles as compared with normal peacetime operations?

A. Well, my opinion is that the army could well afford to be using water transportation in order to save box cars, which are becoming more scarce every day.

Mr. FOSTER. That is all.

Exam. MCGRATH. Cross examine.

Cross examination by Mr. EISEN:

Q. Mr. Brennan, will you tell us, please, approximately how many of these army trucks, or automobiles, you are
523 shipping by water per day, or per week?

A. Now?

Q. Yes.

A. Why, right at this very moment I do not know of any that are moving.

Q. You understand, do you not, that the applicants here have temporary authority to transport automobiles for the duration?

A. Why, I don't know whether it is for automobiles, or just for trucks. I couldn't say. I do know that they have it for trucks.

Q. Do you have any information other than that which you testified to at the last hearing concerning what the situation will be, when you go back again into the production of commercial automobiles, or when you will go back into the production of commercial automobiles?

A. No, sir; I have not. We will not go back, of course, until after the war is over.

Q. You have no idea, then, or no notion at this time, as to what the situation will be at that time?

A. No.

Mr. EISEN. That is all.

Exam. MCGRATH. Are there any further questions on cross examination?

Mr. LEWIS. Just one question.

By Mr. LEWIS:

524 Q. Mr. Brennan, have you a break-down of the number of army vehicles that have been carried during the past year by the various available vessels over the lakes?

A. No.

Q. You do not intend to testify here, then, do you, that the applicants—or that the vessels operated by the applicants were the only ones that have carried such vehicles?

A. Give me that again.

Exam. MCGRATH. Read the question, please.

(Question read.)

A. No, sir; I do not. I believe that there was one other company, that carried some of them.

By Mr. LEWIS:

Q. What other company do you refer to?

A. I think it was the——

Q. Great Lakes?

A. The Great Lakes Transit Corporation. Their boats are all gone now, by the way.

Q. Well, is it not a fact that the Chrysler Corporation has shipped vehicles across the lakes over the Detroit & Cleveland?

Mr. EISEN. Last year.

The WITNESS. Pardon me?

By Mr. LEWIS:

Q. Last year, 1942.

A. Army vehicles?

Q. Yes.

A. I am sorry, but I wouldn't be able to say definitely as to that.

525 Q. You would not say that they had not, would you?

A. No.

Mr. LEWIS. That is all.

Exam. MCGRATH. Are there any further questions on cross examination?

Mr. ELDRED. Yes.

By Mr. ELDRED:

Q. Mr. Brennan, do you see any difference in the transporting of army trucks on the topsides of freighters, and transporting them on flat cars?

A. No, sir; I don't see any difference.

Mr. ELDRED. Thank you.

By Mr. SULLIVAN:

Q. Mr. Brennan, you have expressed your view as to the serious situation that will confront lake traffic at the termination of the war.

A. Yes.

Q. And you have stated, my client has lost all 14 of its ships by government requisition.

A. Yes.

Q. Now supposing, at the conclusion of the war, that my client should buy 500 ships of the same type it has lost. That would correct the situation pretty well on the Lakes, would it not?

A. Why, if they were the right type of ships, I would say that it would go a long way toward doing so; yes, sir.

Q. I mean, the same type as they lost.

A. Yes.

526 Q. Or supposing that they only bought 300 ships. The situation would still be very favorable, would it not?

A. Yes.

Q. But the fact of the matter is, you do not know at the present moment what the post-war program is going to be, do you?

A. Well, we anticipate, of course, that there will be a very great demand for automobiles and trucks at that time.

Q. I am not talking about that, Mr. Brennan. I am talking about the lake transportation situation. You do not know at this time what that program is going to be, do you?

A. No, sir; I do not.

Mr. SULLIVAN. That is all.

A. (Continuing). I am merely judging it from the present conditions, and what the conditions have been in the past; that is all.

Exam. McGRATH. Are there any further questions on cross-examination? (No response.) Have you any questions on redirect, Mr. Foster?

Mr. FOSTER. None.

Exam. McGRATH. That is all.

(Witness excused.)

Exam. McGRATH. Next witness.

Mr. FOSTER. Mr. Rivett.

Exam. McGRATH. Has this gentleman testified before?

Mr. FOSTER. Yes.

527 Mr. SULLIVAN. These are his regular witnesses, your Honor.

Exam. McGRATH. You testified previously under oath, did you?

Mr. RIVETT. Yes, sir.

Exam. McGRATH. You understand that you are still testifying here under oath?

Mr. RIVETT. Oh, yes.

Exam. McGRATH. That is to say, you were sworn at the prior hearing.

Mr. RIVETT. Yes, sir.

Exam. McGRATH. And the oath which you took at that time, still applies.

Mr. RIVETT. I so understand it.

WILLIAM H. RIVETT recalled:

Direct examination by Mr. FOSTER:

Q. Your name is William H. Rivett.

A. Yes, sir.

Q. Mr. Rivett, is the Hudson Motor Car Company manufacturing any motor vehicles at the present time?

A. No.

Q. It is not?

A. No, sir.

Q. You testified back in February of 1942 in this proceeding, I believe—in this same case.

528 A. Yes, sir.

Q. Now since that time, Mr. Rivett, it has developed that some 19 ships that were formerly engaged in the transportation of automobiles on the Great Lakes are no longer available for that purpose, for the purpose of transporting automobiles.

A. Yes.

Q. In your opinion as traffic manager of your company——

A. Assistant traffic manager.

Q. Or rather, as assistant traffic manager, I should say, of your company, will the service of the ships of the applicants herein be needed upon the resumption of automobile traffic on the Great Lakes?

A. In my opinion they will be needed; yes, sir.

Q. I take it that you have no present knowledge as to the possible movement of motor vehicles by the armed services at the present time, have you?

A. No, sir.

Mr. FOSTER. That is all.

Exam. MCGRATH. Cross-examine.

Cross-examination by Mr. EISEN:

Q. Mr. Rivett, do you have any direct personal knowledge of when your company will resume production?

A. Of commercial automobile vehicles?

Q. Yes.

A. No.

529 Q. Or do you have any direct personal knowledge as to how many units your company will produce when it does resume such production?

A. No.

Q. Do you have any personal knowledge of what the transportation needs of your company will be, with respect to the number of ships, or the carrying capacity of such ships on the lakes when your company does resume commercial production?

A. No definite information.

Q. That is what I say.

A. No.

Mr. EISEN. That is all.

By Mr. ELDRED:

Q. Mr. Rivett, have you ever used the service of the applicants from any other port or ports except those on Lake Erie?

A. None that I am able to recall to mind just at the present moment; no, sir.

Mr. ELDRED. That is all.

Exam. MCGRATH. Are there any further questions on cross-examination?

Mr. SULLIVAN. Yes; please.

By Mr. SULLIVAN:

Q. Mr. Rivett, do you know what the post-war shipping program will be upon the Great Lakes at the termination of the war, if, as and when the war is brought to a termination?

A. Why, I wouldn't be able to say definitely as to that
530 at this time; no, sir; but we certainly do anticipate going back into the production of automobiles.

Q. I am now inquiring, Mr. Rivett, merely as to whether or not you know anything about the lake transportation conditions, about what the lake transportation conditions will be at the termination of the war.

A. Why, not definitely; no, sir; but apparently there will not be an abundance of vessels available, considering the fact that a number of ships have been assigned to other services.

Q. Well, do you know what those companies whose ships have been taken, will do when they resume operation?

A. No.

Q. Well then, not knowing what is going to be done, how can you competently express an opinion as to whether or not the service of the McCarthy Steamship Company will be needed at the termination of the war for the carriage of automobiles?

A. Why, I can only base my opinion on what happened the latter part of 1941, when there were not enough vessels available to move the cars off of the docks.

Q. Exactly. That was in 1941.

A. Yes, sir.

Q. And you do not know how many ships my client, for example, may put back into service?

A. No.

Q. And you do not know what the government may do
531 in aid of transportation on the Great Lakes, do you?

A. No.

Mr. SULLIVAN. That is all.

Exam. MCGRATH. Are there any further questions on cross-examination? (No response.) Is there any redirect examination?

Mr. FOSTER. Yes.

Redirect examination by Mr. FOSTER:

Q. Mr. Rivett, your company does definitely plan on resuming the manufacture of automobiles after the war is over, does it not?

A. Yes, sir.

Q. And you of course could not possibly know what might be in the mind of Mr. Sullivan's client, with respect to its plans after the war, could you?

A. Not very well.

Mr. FOSTER. That is all.

Exam. MCGRATH. You are excused.

(Witness excused.)

Exam. MCGRATH. Next witness.

Mr. FOSTER. Mr. Rogers.

Mr. ELDRED. Pardon me, if the Examiner please, but I would like to ask one further question of Mr. Brennan, if I may.

Exam. MCGRATH. All right.

Mr. ELDRED. To save time, he may answer it right from where he sits, if that is agreeable.

532 Exam. MCGRATH. Go ahead.

Mr. ELDRED. Mr. Brennan, to your knowledge, did you ever use the boats of the McCarthy Steamship Company to ports other than those on Lake Erie?

Mr. BRENNAN. To ports other than on Lake Erie?

Mr. ELDRED. Yes.

Mr. BRENNAN. No; I don't think so.

Mr. ELDRED. That is all I had. Thank you very much.

Exam. MCGRATH. Are there any further questions of Mr. Brennan? (No response.) All right.

Mr. FOSTER. Mr. Rogers.

Exam. MCGRATH. You have not previously testified in this proceeding, have you, sir?

Mr. ROGERS. No.

E. B. ROGERS was sworn and testified as follows:

Direct examination by Mr. FOSTER:

Q. Mr. Rogers, will you give your full name to the reporter, please.

A. E. B. Rogers.

Q. With what company are you connected?

A. Pontiac Motor Division of the General Motors Corporation, Pontiac, Michigan.

Mr. LEWIS. I did not get that.

Exam. MCGRATH. Read it, please.

533 (Answer read.)

By Mr. FOSTER:

Q. Where do you reside?

A. Pontiac, Michigan.

Q. Your position with the Pontiac Division of General Motors?

A. Traffic manager.

Q. As traffic manager of Pontiac, do you have a general knowledge of the movement of automobiles over the Great Lakes?

A. Yes.

Q. There have not been many pleasure automobiles moving over the Great Lakes since 1941, have there?

A. No, sir.

Q. Now during the year 1941 what were the principal com-

panies that were transporting automobiles on the Great Lakes by water?

A. Well, we used the Detroit & Cleveland Navigation Company; Great Lakes Transit; the MAT Line—Minnesota-Atlantic; and probably several others that I am not able to recall to mind right now. I can tell them, if you will name them for me, whether we have used them or not.

Q. Nicholson-Universal?

A. Yes; we used them.

Q. Was 1941 a rather large year in the manufacture of automobiles?

A. In the Pontiac Division it was a heavy year.

Q. And the industry in general had a large year in 1941, did it not?

534 A. Why, I wouldn't be able to answer that of my own personal knowledge, but generally speaking, I think it did have; yes.

Q. In your opinion, it did have?

A. Yes, sir.

Q. Now, Mr. Rogers, were the transportation facilities which were available in 1941 sufficient to take care of all of the needs of the Pontiac Motor Car Company in the transportation of automobiles by water over the Great Lakes?

A. Not out of Cleveland and Buffalo; no, sir; and also at some of the Lake Superior ports, like Duluth, Minnesota, there was quite some delay.

Q. Now, upon the resumption of the production of automobiles, can you say whether or not it is the intention of your company to again use water facilities?

A. Yes.

Q. It is their intention so to do?

A. Yes, sir; it is.

Q. Does your company at the present time manufacture motor vehicles for any branch of the army?

A. No, sir; no motor vehicles at all, in our division.

Q. Do you know of your own knowledge whether or not other divisions of the General Motors Corporation do manufacture motor vehicles?

A. Any answer that I might make to that question would just be hearsay, because I have not seen them.

535 Q. You have not actually seen them?

A. No.

Q. Do you have any knowledge now as to the immediate need for transportation of these army vehicles by water?

A. No.

Q. It has been testified here, Mr. Rogers, as the record will

show, that there were 21 vessels formerly engaged in the transportation of automobiles over the Great Lakes, and which as a matter of fact were so engaged in 1941, which are no longer available for the transportation of automobiles on the Great Lakes. Would you say, from your knowledge of the transportation picture, covering the transportation of automobiles and motor vehicles by water, that the three vessels of the applicants here will be needed for the transportation of automobiles when the manufacture of pleasure cars is resumed?

A. Well, I can only speak from past experience as to that, but I can say that they were very badly needed when we were shipping automobiles, as late as 1941.

Q. And that was with all of the other 21 vessels available; is that correct?

A. I don't know the exact number.

Q. But they were very badly needed in 1941, do I correctly understand you to say?

A. Yes, sir.

Mr. FOSTER. That is all.

536 Exam. McGRATH. Cross-examine.

Cross-examination by Mr. EISEN:

Q. Mr. Rogers, are you personally familiar with when your company will go back into automobile operation—or production?

A. No.

Q. Do you have any personal knowledge of what production your company will engage in, as to units, upon the resumption of production?

A. The number of units?

Q. The number of cars.

A. No.

Q. Do you have any personal knowledge as to the number of boats, or the vessel capacity, that will be required after the termination of the war, to satisfy the needs of your company?

A. No.

Q. Do you have any knowledge as to whether or not the existing carriers will make available to your company sufficient vessels for the carriage of its products?

A. I could not speak, only from past experience.

Mr. SULLIVAN. He has not answered the question.

Mr. EISEN. Read the question and answer, please.

(Question and answer read.)

By Mr. EISEN:

Q. Can you answer yes or no?

A. "No."

537 Mr. EISEN. That is all.

Exam. McGRATH. Is there any further cross-examination?

Mr. ELDRED. Yes.

By Mr. ELDRED:

Mr. Rogers, to your knowledge did the applicants here ever transport motor vehicles from ports other than those on Lake Erie?

A. Not to my knowledge; no.

Q. You have referred to the year 1941. Was not the year 1941 about the best year as far as possible as the general production of automobile equipment is concerned, for a long period of time?

A. In answering that question, I would only be able to speak for Pontiac, sir.

Q. All right.

A. I believe that we had a pretty good record, for some years past, although I do not have the figures with me here, however.

By Mr. EISEN:

Q. If I may ask you right there, what do you mean by "for some years past"?

A. Well, I mean—I think that in the years 1927, 1928, and 1929 we manufactured more cars than ever we have since that time.

By Mr. ELDRED:

Q. But since the year 1930, say, would you say that the year 1941 was your best year?

A. I wouldn't want to try to answer that question without having the figures before me.

Q. However, it was up near the top?

A. Yes.

538 Q. Would you go that far?

A. Yes, sir.

Mr. ELDRED. Thank you, sir.

Exam. McGRATH. Are there any further questions on cross-examination?

Mr. SULLIVAN. I have no questions.

Exam. McGRATH. Are there any questions on redirect?

Mr. FOSTER. None.

Exam. McGRATH. That is all. You are excused.

The WITNESS. Thank you, sir.

(Witness excused.)

Exam. McGRATH. Next witness.

Mr. FOSTER. That is all.

Exam. McGRATH. The applicants rest?

Mr. FOSTER. That is the case for the applicants; yes, your Honor, except for some possible rebuttal.

Exam. MCGRATH. Do protestants have any testimony to offer?

Mr. SULLIVAN. Yes.

Exam. MCGRATH. You may proceed.

Mr. SULLIVAN. Mr. Emblidge.

W. E. EMBLIDGE was sworn and testified as follows:

Direct examination by Mr. SULLIVAN:

Q. State your name.

A. W. E. Emblidge.

539 Q. Your address.

A. 223 Erie Street, Buffalo, New York.

Q. With what company are you connected, and in what capacity?

A. Vice president, Great Lakes Transit Corporation.

Q. How long have you served the company in that capacity?

A. Approximately five years.

Q. And prior thereto you had how long an experience with the company in traffic matters?

A. About 15 or 16 years.

Q. You have prepared a statement, as I understand it, which you wish to put into the record here, respecting the position of your company in this proceeding; is that correct?

A. Yes, sir.

Q. Will you please proceed to make the statement.

A. The position of Great Lakes Transit Corporation in this proceeding is one of opposition to the granting of permanent common carrier rights to the applicants. At the time applicants sought temporary rights the Commission requested an expression from our corporation, and we indicated no opposition because we were then usable to carry all the trucks offered by the army, and, of course, were eager not to interfere in the war effort. We did, however, at that time state that we did not want that consent to be construed as an indication that we would favor a permanent operation by applicants.

The basis of our opposition in this matter is that we do 540 not wish to meet the permanent competition of the applicants when our company resumes its transportation business after the present emergency. All of the fourteen vessels of our fleet were requisitioned by our government in 1942, six of them having been delivered in mid-June, four in mid-July and four about December 1st. We understand that all of those vessels are now at New Orleans or on salt water. However, our corporation has not abandoned its transportation business and

hopes actively to resume when ships become available. None fit for our service is presently procurable.

In the course of a letter to its stockholders dated November 2, 1942, asking for tenders of preferred stock at prices to be fixed by the stockholders—a copy of which letter I have before me here for general inspection—our corporation said:

"Your Board of Directors has determined upon the policy of continuing the corporation in business, if possible, without serious losses, looking to engaging again after the war in a full line package freight operation, as formerly."

Our corporation has operated as a common carrier upon the Great Lakes since 1916 in two branches of service; one from Buffalo, New York, to the western Lake Superior ports and way ports; and the other, from Buffalo, New York, to Chicago, Illinois, and way ports. We did not operate regularly in Lake Michigan in 1942, due to the mandating of four of our vessels to the grain trade by the Office of Defense Transportation.

541 We made our showing to the Commission under application for the continuance of our grandfather rights in Docket W–154, and the Examiner rendered a completely favorable report. The Commission has not as yet acted. It is submitted that our grandfather rights persist and are not lost because of the act of our government in taking our vessels for war purposes. The interruption of our service obviously resulted from causes beyond our control. Upon that point I should like to offer in evidence at this time a copy of a letter from Commissioner Porter to Director Eastman, dated April 24, 1942, to the effect that the interruption of our service as a result of the diversion of four of our ships to the grain trade by order of the Office of Defense Transportation would not work a forfeiture of our grandfather rights in that lake.

Mr. SULLIVAN. Let us have it marked for identification at this time, please, as Protestants' Exhibit No. 35.

(Protestants' Exhibit 35, Witness Emblidge, marked for identification.)

The WITNESS. We respectfully submit that our existing grandfather rights are entitled to protection against the permanent competition of another carrier operating under temporary rights only because former operators are prohibited from engaging in business by a governmental mandate.

We should like to direct attention, by brief reference only, to two cases before the Commission in which this carrier

542 was involved, because in them the Commission passed upon issues relating to the effect of excess competition between water carriers on the lakes. In Nicholson Universal Steamship Company, et al., versus Pennsylvania Railroad Company, et al.,

reported in 203 I. C. C. 637, and affirmed in 206 I. C. C. 563, the Commission denied the prayer of a water carrier for an order compelling the eastern rail carriers to join in joint rates and through rates, for reasons, among others, that existing joint rail and water service was adequate, and that the introduction of a new water line into service might jeopardize existing water lines. In Minnesota-Atlantic Transportation Company—Control—Finance Docket No. 13378, the Commission permitted this carrier to acquire all of the stock of its competitor, Minnesota-Atlantic Transport Company, for the reason that both companies for years had lost money as a result of the competitive operations.

By Mr. SULLIVAN:

Q. When you say "this carrier" you mean, Great Lakes Transit Corporation.

A. That is correct; yes, sir. A witness will follow me with two statistical exhibits.

Mr. SULLIVAN. That is all on direct. I offer Protestants' Exhibit 35 in evidence.

Exam. MCGRATH. Without objection, the exhibit will be received and marked as Protestants' Exhibit 35.

(Protestants' Exhibit 35, Witness Emblidge, received in evidence.)

543 Exam. MCGRATH. Cross-examine.

Mr. FOSTER. Shall I start?

Exam. MCGRATH. Yes. I understood counsel to say that the direct examination of the witness had been completed.

Mr. SULLIVAN. I so stated.

Cross-examination by Mr. FOSTER:

Q. As I understand you, Mr. Emblidge, you say it is definitely the intention of your company to resume the package freight business after the emergency?

A. Yes.

Q. You have no idea at the moment as to how soon you can resume that service, of course?

A. No, sir. We are trying practically daily to get other boats, but there is none of our type available, that we have been able to run into so far.

Q. How long have you been trying to get these other boats?

A. Oh, we have been trying ever since the War Shipping Administration requisitioned our fleet last year.

Q. As you see the picture at the present time, then, you apparently, in order to be able to resume service, are going to be compelled to build new ships; is that correct?

A. Either build or convert. After the war, I feel that there will be a considerable amount of tonnage available, and it will just

be a question of whether the ships can be converted into the type of equipment that can handle that tonnage, or whether
544 it will be better to start in over again and build from scratch. That has not been definitely determined as yet, of course.

Q. The process of building from scratch, as you describe it, is a very long process, is it not?

A. Well, no, sir; I wouldn't say that it was; not too long, at any rate.

Q. How long?

A. Oh, I would say that it would probably take a year to get into operation. Operation with a new fleet, and get it onto the lakes.

Q. How many ships would you expect to build, in that period of one year?

A. Well, I just had in mind that in order to properly conduct our business, the way it was being conducted when we left off, it would require practically the same number of ships as we had when they were requisitioned away from us.

Q. Well, do you contemplate having fourteen ships?

A. Why, we would have to. We did not have any too much equipment before, as a matter of fact. If we had bigger ships, we might be able to cut the number down, that is, but we would have to have something in reserve also, to carry on a million ton package freight business. Over the course of a year, you would have to have sufficient ships available to provide a service that would be in keeping with the tonnage which was offered, and that would satisfy the shippers.

545 Q. Have you discussed with any shipyard the question of building those ships?

A. No, sir; I have not. That would be an operating matter, that would be handled by the Operating Department and the President.

Q. Are you a member of the Board of Directors of Great Lakes Transit Corporation?

A. No.

Q. As far as you know, there have been no plans drawn up for any new ships, have there?

A. Not to my knowledge.

Q. Do you yourself have any idea with respect to what a new ship would cost?

A. No, sir; I have not—at least, nothing definite, that is. That would be up to the operating men, with respect to that. I do know this, however, as testified previously, in connection with the stockholders, that we are going to build equipment; but as to just what the cost of that would be, I would not be able to tell you.

Q. I do not understand that last statement. You say, you have testified previously in connection with the stockholders?

A. Well, I mean, in the statement here.

Mr. SULLIVAN. He is referring to the reference he made a few moments ago.

The WITNESS. There is an exhibit here, or a document,
546 that you can look at, in that connection, if you wish to do so.

Mr. SULLIVAN. He just read from it.

Exam. MCGRATH. An excerpt.

Mr. SULLIVAN. He just read an excerpt from it, yes.

Mr. FOSTER. Well, I have not seen it.

Mr. SULLIVAN. Are you interested in seeing that letter, counsel?

Mr. FOSTER. Yes, I am.

Mr. SULLIVAN. The letter consists of two pages, but the witness only read one paragraph. We presented that, I may say, because we wanted you to see that this declaration of policy for the future was not evolved just for this little case alone. It is dated November 2nd, you will observe.

By Mr. FOSTER:

Q. You have no personal knowledge at all, have you, with respect to how you would go about continuing in business, in line with this policy of acquiring ships?

A. Oh, I do not think that it is such a very difficult problem, myself. The main thing is, we have the rates and we have the routes, and when it comes right down to the matter of physical equipment after the war, I do not think that that will be the major problem. The main thing is to keep intact your rates, and your routes, and your proper differentials, and things like that, and you can, in my opinion, consider the matter of equipment as more or less of a secondary proposition, because I feel that there will be equipment available.

547 Q. Well, now, you stated in your prepared statement that both your company and the Minnesota-Atlantic Transit Line had continuously lost money in the operation of the package freight business.

A. Yes, sir; and that was the purpose of our merger.

Q. Yes. And your company had fourteen ships.

A. Yes.

Q. And it continuously lost money.

A. Yes.

Q. Is that right?

A. Yes, sir; that is substantially correct—since 1934, that is.

Q. Since 1934.

A. Yes, sir.

Q. What was the book value of the fourteen ships?

A. I couldn't tell you that.

Q. Well, had they been written substantially down to where your capital investment in them was small?

A. Well, under the Interstate Commerce Act, we would have to depreciate them, of course, over a period of years. Now, of course, that is all shown by the books, and our auditor is present here today, and he can probably explain that to you better than I can.

Mr. SULLIVAN. He is here.

Mr. FOSTER. Very well, then. Let us just leave it that
548 way. If your auditor is here, that is all right.

By Mr. FOSTER:

Q. Now, you do not know.

A. No.

Q. All right.

A. That is a different department.

Q. And you have no personal knowledge with respect to what it would cost, or what investment would be required to replace those fourteen ships with new ships, have you?

A. No.

Q. Or as to whether it is the plan of your company to replace all fourteen of those ships, or just a few of them, with new ships?

A. Oh, I know that it is the plant of the company, without any question about it, to provide sufficient service to handle the tonnage that is offered us, to be moved.

Q. But you have no idea ——

A. (Continuing.) And that in my opinion, as I testified before, would require somewhere around ten to twelve or fourteen vessels.

Q. Your company never was a serious factor in the transportation of automobiles, was it? It never was a heavy transporter of automobiles, was it?

A. Well, yes, sir—that is, we have always liked the automobile business very much. I do not know just what you would call a serious factor, but in my opinion, when the revenue from automobiles goes up to around half a million dollars per
549 year, why that is a pretty big piece of revenue.

Q. And you had one automobile boat as such, did you not?

A. Yes, sir. We carried the others on the package boats.

Q. During what year did your revenue go up to around half a million dollars from the transportation of automobiles?

A. I think that was around about 1940 or 1941, or along in there somewhere.

Q. Do you recall how many cars you transported either in the year 1940 or the year 1941?

A. Not the exact number.

Q. Approximately?

A. Oh, I would say that we transported—well, I wouldn't want to guess at it, either. I do not have the complete figures with me.

Q. Will your auditor have the figures as to what the revenue of your company was from the transportation of automobiles in 1940 or 1941?

Mr. SULLIVAN. Ask him.

A. Well, you had better ask him that. I do not know whether he will or not.

By Mr. FOSTER:

Q. Where did you get the information that your company received $500,000 of revenue from the transportation of automobiles?

A. Well, because ——

Q. Answer the question.

Mr. SULLIVAN. He is.

A. In this kind of business, you know from your general knowledge of your statement, about what your revenue is. That is just good business, to know about what your tonnage is, and your revenue.

By Mr. FOSTER:

Q. What was the rate on automobiles between Detroit and——

Mr. EISEN. Objection.

Exam. MCGRATH. Let him finish.

Mr. FOSTER. I submit that the question is a proper one, with this line of testimony in the record, with respect to the revenue from automobiles.

Mr. ELDRED. What is the relevancy?

Exam. MCGRATH. What is the relevancy of the rate?

Mr. FOSTER. The relevancy of the rate is that the witness has testified here that they had a revenue of $500,000. Now, I want to know how he arrives at that figure of $500,000 revenue from the transportation of automobiles. That is a lot of automobiles, Mr. Examiner.

Exam. MCGRATH. I think the witness answered once before that he could not tell you the number.

Mr. SULLIVAN. That is what he was trying to tell you.

Mr. EISEN. But this is something else, now.

Mr. ELDRED. This is the rate, that counsel is asking about now.

551 By Exam. McGRATH:

Q. Mr. Emblidge, do you know the number of automobiles that were transported?

A. I wouldn't be able to say offhand, no, sir; but if it is important enough, I could probably dig it up.

Mr. SULLIVAN. If your Honor please, may we be off the record for a moment?

Exam McGRATH. Yes.

(Discussion outside the record.)

Exam. McGRATH. Back on the record.

By Mr. SULLIVAN:

Q. Can you give the revenue figure for the year 1941, Mr. Emblidge?

A. Yes, sir. For the year 1941, taking that one figure, our automobile revenue was $350,000.

By Mr. FOSTER:

Q. Your total automobile revenue?

A. Yes, sir.

Q. Representing how many units?

A. 20,000 units.

Q. Do you know what it was in 1940?

A. In 1940 the revenue was $331,000, representing 23,000 units—that is, for the three lakes combined, Lake Erie, Lake Superior, and Lake Michigan. Apparently I was wrong, in the figure that I gave before. I thought it was $500,000.

Q. You did move automobiles on Lake Erie during the years 1939 and 1940, did you?

A. Yes, sir.

552 Q. On your own tariffs?

A. That is correct.

Q. And you have asked for an extension of your grandfather rights to move automobiles over that route?

A. Yes, sir.

Q. Between Detroit and Buffalo?

A. And all other lake ports where we formerly handled automobiles.

Q. Did you handle any automobiles to Cleveland?

A. From Buffalo to Cleveland?

Q. No. Detroit to Cleveland.

A. No.

Q. And you are not claiming any rights there?

A. No, sir; nothing except what we formerly had, or what we formerly handled, under the grandfather application.

Mr. FOSTER. That is all.

Exam. McGRATH. Are there further questions on cross-examination?

Mr. EISEN. I would like to ask just one question of Mr. Emblidge, predicated on his experience.

Exam. McGRATH. Is this cross-examination?

Mr. EISEN. Why, I don't know whether it is or not, your Honor. I guess perhaps it may be, technically. You may call it that, anyway, as far as the record is concerned.

Exam. McGRATH. All right.

553 By Mr. EISEN:

Q. Mr. Emblidge, predicated upon you past experience in transporting freight on the lakes, would you say that in the future your company could or could not operate efficiently and economically with new or additional competitors in the field?

A. Well, the purpose of the merger referred to was to bring about an operation whereby we would be assured, as nearly as possible, full loads both ways, and certainly if after the war other competition steps in, and the tonnage is again split up among other carriers, the picture will certainly not be any brighter than it was prior to the merger.

Mr. EISEN. That is all.

Exam. McGRATH. Are there any further questions on cross-examination?

Mr. FOSTER. Yes.

By Mr. FOSTER:

Q. When did this merger take place?

A. Well——

Mr. SULLIVAN. I can give you the date.

The WITNESS. It was effective with the 1942 season of navigation, you might say, from an operating angle. Actually went in on January 1, 1942. The Commission decided it, I would say, along about——

Mr. SULLIVAN: November 18, 1941.

The WITNESS. Right.

By Mr. FOSTER:

554 Q. At the time of this merger the Minnesota-Atlantic Transit Line did not have any vessels in the picture at all, did it?

A. Well, does that have anything to do with this?

Q. Certainly.

A. Are we trying that issue here?

Q. You are saying that you merged because you could not operate profitably, and I am now trying to find out why you did merge.

A. Well, if you read the finance case, and get smarted up on it, you can answer your own question.

Q. I am asking you, now, sir. I am asking you, at the time of the merger, if the Minnesota-Atlantic Company had absolutely no vessels to merge in any operation? Is that right, or not?

A. Your are wrong.

Q. All right. What vessels did they have?

A. Well, they owned the "Richardson," that I can think of right offhand here.

Q. Well, but the MAT L[illegible] sold the "Richardson" direct, did it not, so that it was not included in the merger?

A. Well now, there again you are getting into something that I don't understand is any part of the issue here.

Mr. SULLIVAN. It was not included in the merger.

Mr. FOSTER. All right.

Mr. SULLIVAN. We will go along with you that far.

Mr. FOSTER. All right.

Exam. MCGRATH. We would rather have the witness
555 testify, if he can. As I understand it, the witness cannot answer the question.

The WITNESS. No.

Exam. MCGRATH. You are not able to answer that?

The WITNESS. No.

Exam. MCGRATH. Go ahead.

By Mr. FOSTER:

Q. As a matter of fact, Mr. Emblidge, the MAT Line never at any time owned the "Richardson"; that is correct, is it not?

A. I couldn't answer.

Q. Well, you do know as a matter of fact, do you not, that at the time of the merger there between the Minnesota-Atlantic Transit Line and the Great Lakes Transit Corporation, the Great Lakes Transit at that time had eight vessels left; did it not?

A. The Great Lakes?

Q. Yes.

A. At the time of the merger?

Q. It had eight vessels left at the time of the merger; that is correct, is it not?

A. You are wrong.

Q. How many vessels did it have left, then—Great Lakes Transit—at the time of the merger?

A. We started with fourteen.

Q. You started in with fourteen?

556 A. Yes, sir.

Q. And the Minnesota-Atlantic Transit Line at the time of the merger, as it appears from the Finance docket that you have referred to, did not own a single boat of any kind, nature or description, did it?

A. (No answer.)

Q. Can you answer that question, Mr. Emblidge? Is that correct, or not?

A. Well now, let me understand what you are talking about, if I can. Are you talking about the time when the merger was filed—that is, at the time the application for a merger was sent to Washington, or the petition, or whatever you want to call it; or are you talking about the time when the decision came out?

Q. Well, I will ask you what they owned, if anything.

Mr. SULLIVAN. That is—what?

By Mr. FOSTER:

Q. What vessels of any kind, nature or description did they own at the time the application to permit the merger was sent to Washington?

A. Oh, they had their own equipment at that time, but I wouldn't be able to say now just what it was.

Mr. SULLIVAN. If your Honor please, may we be off the record again, just briefly?

Exam. MCGRATH. All right.

(Discussion outside the record.)

Exam. MCGRATH. Back on the record.

557 The WITNESS. I will say that I cannot answer that question. They were operating boats. If a line has boats running up and down the lakes, in competition with you, handling freight, I would say that it is an operator. Now, as to whether they leased them, or owned them, is something else again.

Mr. SULLIVAN. All right.

By Mr. FOSTER:

Q. Well, what boats, if any, did they have running up and down the lakes in competition with you, in the fall, the late fall of 1941, if you know?

A. In the late fall of 1941?

Q. Yes, at the time this merger was first started.

A. Well, as I recall it at the present time, they were operating four boats, and we also had four boats in operation.

Q. In the late fall of 1941?

A. Yes, sir; and then possibly it went to five boats apiece. We have always had, in order to produce the service, an alternate sailing arrangement from the head of the lakes, so that their boats would go out, and our boats would go out, and vice versa.

That was so as to provide, as nearly as we could, a daily service out of Duluth. That was due especially to developing the perishable tonnage, such as butter and eggs, and so forth.

Q. Did the Great Lakes Transit Corporation acquire any vessel properties as a result of this merger?

A. No.

Q. Which merger, as you say, was put through, in order
558 to effect economy.

A. They did not.

Q. They did not?

A. No, sir.

Q. Then just what did they acquire, or just what did they get, as the result of this merger?

Mr. SULLIVAN. Counsel——

A. Well, I——

Mr. SULLIVAN. Just a moment, please. I would like to object to that upon the ground of irrelevancy.

Mr. FOSTER. Oh, no.

Mr. SULLIVAN. The whole thing is set up in Finance Docket 13378; and it certainly is irrelevant here.

Mr. FOSTER. Did you give reference to the citation?

Mr. SULLIVAN. It is not in the published volumes. It is Docket 13378. I can explain, if you want, off the record.

Mr. FOSTER. All right. Off the record, if your Honor please.

Exam. MCGRATH. Off the record.

(Further discussion outside the record.)

Exam. MCGRATH. Back on the record.

By Mr. FOSTER:

Q. As a matter of fact, Mr. Emblidge, prior to the time that this merger took effect, that company had chartered from you certain vessels, had it not?

A. Yes.

559 Q. And at the time the merger was approved, they were operating boats under charter from you, were they not?

A. Yes.

Q. And they had sold their boats prior to that time—or, the owner had sold them, so that they no longer had them available; that is correct, is it not?

A. No, sir; that is only partly correct. They had sold some of the equipment during that period that they were chartering from us.

By Exam. MCGRATH:

Q. By "equipment," do you mean vessels?

A. Yes.

By Mr. FOSTER:

Q. Vessels.

A. Yes.

Q. Well, can you actually tell us when they first chartered those four vessels from you?

A. No.

Q. You cannot?

A. No, sir.

Q. Do you think that your auditor will be able to tell us that, when he comes on a little later?

A. You had better ask him.

Mr. [illegible]SEN. I would like to inquire, Mr. Examiner, as to what is the materiality of all this.

The WITNESS. I don't know.

Mr. FOSTER. They have opened it up, your Honor. The
560 witness has been testifying here as to what they are going to do after the emergency, and what their plans are.

Exam. MCGRATH. That is the understanding of the Examiner. Counsel is merely testing the knowledge of the witness.

Mr. FOSTER. That is correct, Mr. Examiner, with respect to the testimony that he has given on direct.

Exam. MCGRATH. Yes, counsel is cross-examining now on the testimony that the witness gave on direct.

Mr. FOSTER. The witness testified that his company merged with this other company in order to effect economies, and I am now merely trying to find out a little something about that merger.

The WITNESS. Well now, Mr. Foster, is this not true, that if there is a line–A and a line–B, that are operating——

Mr. FOSTER. Just a moment.

Exam. MCGRATH. Let us not argue.

Mr. FOSTER. No.

Mr. SULLIVAN: It is all before the Commission.

Exam. MCGRATH. Are there any further questions on cross-examination?

Mr. FOSTER. That is not in this record at all.

Exam. MCGRATH. Are there any further questions on cross?

Mr. FOSTER. No.

Exam. MCGRATH. Is there anything on redirect, Mr. Sullivan?

Mr. SULLIVAN. Yes, sir.

561 Redirect examination by Mr. SULLIVAN:

Q. Mr. Emblidge, Mr. McCarthy testified that he transported last year on Lake Erie some 950 cars. You also transported cars over that lake during that year, did you not?

A. Yes.

Q. How many?

A. About 900. As a matter of fact, we were transporting them at the time that Mr. Foster telephoned me from Detroit and asked me to wire the Commission that we had no objection to temporary rights being granted to McCarthy to move these government trucks; I told him at the time that, in view of the fact that, with our four boats, we could not move the load, we had no objection to the granting of temporary rights as an aid to the war effort.

Q. Now at that time, Mr. Emblidge, you did not have the free use of your full fleet, did you?

A. No.

Q. Some of your boats had already been moved into the grain trade, had they not?

A. Yes.

Q. Now Mr. Foster, in his cross-examination of you, has sought to indicate here that it might take a considerable length of time to build ships of the type that you might desire. In that interim, as in any interim, would it not be the policy of the company to charter temporarily as a makeshift?

562 A. Oh, yes.

Q. When new ships must be built?

A. Yes, that is correct.

Q. At least, that is your hope?

A. Yes, sir. We intend, just as soon as the war is over, to reestablish the service in some form, shape or manner, at the earliest possible date, because we realize that we will have to get back into it very quickly.

Q. Now, did the MAT Line carry automobiles on the decks of its vessels between Detroit and Buffalo?

A. Well, as I recall it now, they went out of the automobile business on Lake Erie probably three or four years ago; but prior to that time, they did do that; yes, sir.

Mr. SULLIVAN. That is all.

Exam. MCGRATH. Are there further questions?

Mr. FOSTER. Yes.

Re-cross-examination by Mr. FOSTER:

Q. They were not a competitor with you in the transportation of automobiles at the time you merged with them, then, were they?

A. Yes, they were.

Q. I mean, now, between the ports of Buffalo and Detroit.

A. No.

Q. They were not?

A. No, sir.

563 Q. Now, Mr. Emblidge, do you have any idea at all as to who might have any boats that they would charter to you?

A. No.

Q. Do you have any boats lined up at the present time under option for charter?

A. No, sir.

Q. In other words, then, you do not have the remotest idea of where you are going to charter a boat, do you?

A. Well, I wouldn't say, the remotest idea.

Q. Well——

A. Because we know where to go to look for boats when the war is over—yes, sir.

Q. Where can you go, or where will you look for boats that would suit your needs after the war is over?

A. We will go to the people who own equipment that is not being used at the particular time that we are looking for ships.

Q. But you do not have any idea at this time—or rather, do you have any idea, as to who those people might be?

A. Why, no, sir. It might even be the government. They own our vessels, at the present time. They have requisitioned them.

Q. And they are all in salt water now, as you understand it, are they not?

A. That may be true; yes, sir; but then, if they went down the river, once they can still come back up the river again.

564 Mr. FOSTER. I will agree with you there.

Exam. MCGRATH. That is, if they do not go down too far. [Laughter.]

The WITNESS. Providing of course they do not go all the way down; that is true.

By Mr. FOSTER:

Q. But you do not know what would have to be done to those boats physically, to change them back, to fit them for your service, do you?

A. No.

Q. You do not have any idea as to what might be involved there, at all, do you?

A. Oh, well, I do know that they would have to be changed over from a salt water operation, and brought back to the condition that they were in, or as near as possible to that condition, at the time they left the Great Lakes; but I have never seen those vessels since they have been converted and shipped out, down the river.

Q. You mean, as to their whereabouts?

A. Yes.

Q. Except that they are on salt water.

A. Yes, sir. I have not seen them, at any rate.

Mr. FOSTER. That is all.

Exam. MCGRATH. Are there further questions of the witness?

Mr. SULLIVAN. Nothing.

Exam. McGRATH. If not, you are excused.

(Witness excused.)

565 Exam. McGRATH. Have you a short witness, whom we can dispose of before we suspend for lunch?

Mr. SULLIVAN. We have two additional exhibits we would like to put in, your Honor.

Exam. McGRATH. Would you like to put them in now?

Mr. SULLIVAN. Yes.

Exam. McGRATH. Very well. You may call your witness.

Mr. SULLIVAN. Mr. Lyon.

Exam. McGRATH. This witness has not been previously sworn, has he?

Mr. SULLIVAN. No, sir.

J. J. LYON, was sworn and testified as follows:

Direct examination by Mr. SULLIVAN:

Q. State your name.

A. J. J. Lyon.

Q. Your address.

A. 223 Erie Street, Buffalo, New York.

Q. With what company are you connected?

A. Great Lakes Transit Corporation.

Q. In what capacity?

A. General auditor.

Q. How long have you occupied that position?

A. Since January 1, 1942.

Q. Prior to that time what was your occupation?

566 A. Prior to that time I was treasurer of the Minnesota-Atlantic Transit Company.

Q. For how long were you in that capacity?

A. Oh, approximately five years, in that particular capacity.

Q. Mr. Lyon, have you prepared certain exhibits for presentation at this hearing?

A. Yes, sir.

Mr. SULLIVAN. Mr. Reporter, Protestants' Exhibit 36 for identification, please.

(Protestants' Exhibit 36, Witness Lyon, marked for identification.)

By Mr. Sullivan:

Q. Mr. Lyon, I hand you a document which has been marked by the reporter as Protestants' Exhibit No. 36 for identification, bearing the caption "Great Lakes Transit Corporation—Statistical table of operations by above carrier and Minnesota-Atlantic Transit Company," and I will ask you to tell us, please, how this exhibit was prepared.

A. Yes, sir. This exhibit was prepared from our I. C. C. reports, that is, the reports of the Great Lakes Transit Corporation to the Interstate Commerce Commission, and the reports of the Minnesota-Atlantic Transit Company to the Interstate Commerce Commission. These figures are based on those annual reports.

Q. For the years shown?

A. Yes, sir.

567 Q. And with the exception of the stars in pencil indicated on this document, and the notation in the lower lefthand corner, is this a photostatic copy of one of the documents in the Merger Case referred to, before the Interstate Commerce Commission?

A. Yes, sir.

Q. To the best of your knowledge and belief, the figures that are set forth here are true and correct, are they?

A. Yes, sir.

Q. I call attention to the fact that the star appearing here so many times carries us to the symbol, or to the note at the bottom of the exhibit, in the lower left hand corner, indicating that the figures besides which those stars stand are in the red, red figures. That is correct, is it?

A. Yes, sir.

By Exam. McGRATH:

Q. And that signifies a deficit, does it?

A. In most instances; yes, sir.

By Mr. SULLIVAN:

Q. Well——

A. As a matter of fact, in all.

Q. In all instances.

A. Yes, sir.

Q. Now, Mr. Lyon, I notice that these figures in your Exhibit No. 36 for identification, and with the year 1940.

A. Yes.

Q. Do you have the corresponding figures for the year 1941?

A. Yes.

568 Q. Were those figures prepared from the same source as indicated above?

A. Yes, sir.

Q. If you will just put those figures into the record, then, in the following manner, I believe it will facilitate matters. For instance, will you please read the column caption in each instance?

Exam. McGRATH: Yes.

By Mr. SULLIVAN:

Q. And then give the corresponding figures for 1941; and we will be able to proceed very nicely that way?

A. All right. Column No. 1, year 1941. Column No. 2, Great Lakes Transit tonnage, 960,251 tons; Column No. 3, MAT Line tonnage, 300,592 tons; Column No. 4, Total tonnage, 1,260,843 tons; Column No. 5, Great Lakes Transit freight revenue, $2,880,782—that is dollars even, with no pennies. The next money column——

By Exam. MCGRATH:

Q. Column 6, is that?

A. Yes, sir; MAT freight revenue, $1,236,519—that is, even dollars, with no pennies. Column No. 7, total freight revenue, $4,117,301—dollars even again, with no pennies. Column No. 8, another money column, $3,418,908.

By Mr. FOSTER:

Q. That figure again, please?

A. $3,418,908—dollars even again, with no pennies. Column No. 9, $1,753,520; Column No. 10, $5,172,428.

Mr. LEWIS: What was that last figure, please?

569 (Answer read.)

A. (Continuing.) Column No. 11 is in the red, $264,379; and Column No. 12, $45,909.

By Mr. EISEN:

Q. In the red?

A. Yes, sir; all red. Then, lastly, Column No. 13, Net Income, is still in the red.—$310,288.11.

By Mr. SULLIVAN:

Q. That completes the figures.

A. Yes, sir.

Mr. SULLIVAN. Mr. Reporter, Protestants' Exhibit No. 37 for identification, please.

(Protestants' Exhibit No. 37, Witness Lyon, marked for identification.)

By Mr. SULLIVAN:

Q. Mr. Lyon, I show you a document which has been marked by the reporter as Protestants' Exhibit No. 37 for identification, which, under the caption of the name of your company, reads "Table of gross revenue, expenses and net results of operations in total and divided between named lakes served for years stated below." Was this exhibit prepared under your direction?

A. Yes, sir. That is, it was checked by me. The original, from which this was prepared, however, was not prepared by me or

under my direction. I verified the figures, however, when this exhibit was set up.

Q. But the last column here shows your figures, does it not?

A. Yes.

570 Q. The figures in the last column are your figures?

A. Yes.

Q. Prepared by you?

A. Yes, sir.

Q. To the best of your knowledge and belief is this exhibit correct in what it purports to show?

A. Yes, sir.

Q. What were the sources of information?

A. Well, the final results, shown as Net Result, was taken, as indicated, from line 7, page 300, I. C. C. Annual Report. In other words, those are the figures which the mathematical calculations above will verify.

Q. So that the basis of this statement is the annual reports to the Interstate Commerce Commission; is that correct?

A. Yes, sir.

Mr. SULLIVAN. At this time, if your Honor please, I offer Protestants' Exhibits Nos. 36 and 37 for identification in evidence.

Exam. MCGRATH. Without objection, the exhibits will be received in evidence and marked as Protestants' 36 and 37.

(Protestants' Exhibits 36 and 37, Witness Lyon, received in evidence.)

Mr. SULLIVAN. That is all on direct.

Exam. MCGRATH. Cross examine.

571 Cross-examination by Mr. FOSTER:

Q. Great Lakes Transit Corporation, then, Mr. Lyon, has not since 1933 made a net profit; is that correct?

A. Yes.

Q. They have had losses, since they have made any profit, of well over two million dollars; is that correct?

A. Yes.

Q. Do you know the book value of those fourteen ships that have been referred to here, at the time they were taken over?

Mr. SULLIVAN. Just a moment. I would like to object to that question, if your Honor please. I see no competency to that.

Mr. FOSTER. Oh, if the Examiner please, I think it is very important. They say that they plan on going into the business again, and continuing operations; and I think it is perfectly proper to inquire if they are physically able to get the vessels.

Mr. SULLIVAN. Objection.

Exam. MCGRATH. This witness has not testified with respect to any vessels.

Mr. FOSTER. No; that is true, Mr. Examiner; but the other witness, the preceding witness, referred us to the auditor. He said he did not know, but that the auditor was going to be on the stand a little later on.

Mr. SULLIVAN. Regardless of that, your Honor, I am ob-
572 jecting to this line of cross-examination because it is not competent. I put the query: what difference does it make if our vessels were worth $100, or $1,000,000?

Exam. MCGRATH. What is the relevancy of this line of cross examination, counsel?

Mr. FOSTER. The relevancy of this line of cross examination, if the Examiner please, is this: they are contending here that these applicants ought not to be permitted to go into this business, because they would be competitors of theirs; that they should not be permitted to operate the boats that they presently have. They say that their vessels have been taken away from them; and they have read a statement of the record, an excerpt from a letter which they sent to their stockholders——

Mr. ELDRED. Is this oral argument; now?

Mr. FOSTER. No; it is not. The Examiner asked me what the relevancy is of this line of cross examination, and I am trying to answer him.

Mr. ELDRED. This is all going into the record, is it?

Mr. FOSTER. Yes.

Exam. MCGRATH. Go ahead.

Mr. FOSTER. Now then, if the Examiner please, they say that it is possible for them to continue. I say it is perfectly pertinent for me to try to find out whether or not it is possible for them
573 to continue. They have left the inference here that it is possible for them to continue.

Mr. SULLIVAN. Now, your Honor, I would like to say just a word on that, because I regard that as the crux of this case. These applicants are operating under temporary rights, and they can so operate until the end of 1944.

Mr. FOSTER. Their operations under temporary rights are purely their original application as to their other operations.
same vessel at the same time, but they are still operating under their original application as to their other operations.

Mr. SULLIVAN. And you do not operate in any other way, with automobiles, except in the grain boats, do you?

Mr. FOSTER. We may, or we may not. We have not so far; no; but we might operate with automobiles on ore boats, or in various other ways which we would have a perfect right to do under our original application.

Mr. SULLIVAN. If you did not have the temporary rights at this moment to do everything that you want to do, there is still a way

open to you. Now as contrasted with that, if your Honor please, they want to acquire permanent rights, leaving us in the peculiar situation that when the war is over we will be met with a competitor that came in under a temporary arrangement and then offers competition to the old established lines.

Mr. FOSTER. We filed an application in this matter before we even got into the war, with respect to the sale of fourteen vessels, most of which apparently were lying at the dock
574 doing nothing.

Mr. EISEN. Because there was not enough business.

Mr. FOSTER. And we are still operating under our original authority on the Great Lakes, under our original application.

Exam. MCGRATH. If you consider that this testimony is pertinent, counsel, you are at liberty to call this gentleman as your own witness, if you desire to do so. However, he has not covered this matter in his direct testimony, and therefore I will have to sustain the objection.

Mr. FOSTER. Very well, then, sir. I will call him as my own witness.

Exam. MCGRATH. Very well. Your examination of the witness from now on will be conducted upon that basis.

Mr. FOSTER. Yes.

Exam. MCGRATH. All right.

By Mr. FOSTER:

Q. Mr. Lyon, do you know the present financial situation of the Great Lakes Transit Company?

A. Just how do you mean?

Q. Do you know the present financial standing of that company? How much money has it got in the bank, for example?

A. I couldn't say definitely.

Q. Tell us approximately.

Mr. SULLIVAN. Now, if your Honor please, I am going to object to that, for the reason that the policy of the company, which
575 has been in effect a great many years, should not be interfered with by somebody having temporary rights, or seeking temporary rights, and thus getting a foothold upon which to compete with these other companies in the future. Until it is established that they are not going into the business permanently, these applicants should not be given rights. That is why I fail to see what the financial condition of this company has to do with this case.

Mr. EISEN. And particularly, Mr. Examiner, in view of the events which necessitated a cessation of service by the established lines.

Mr. SULLIVAN. What Mr. Eisen means, your Honor, is that the government took our ships.

Mr. EISEN. Yes.

Mr. SULLIVAN. We did not give them up voluntarily.

Exam. McGRATH. What relevancy has this question to the direct testimony of the witness?

Mr. FOSTER. He is my witness, now.

Mr. SULLIVAN. I renew my objection.

Exam. McGRATH. I am asking you, what the relevancy of this last question is, counsel?

Mr. FOSTER. The relevancy, your Honor, is as to whether or not they can carry out what they say very glibly is their plan, if a lot of things happen. I think it is most important to see whether or not they are going to be able to do what they say they are
576 going to do. One witness, for example, testified that they expected to operate fourteen boats.

Mr. SULLIVAN. Oh, no.

Mr. FOSTER. Or at any rate, enough to take care of them,—something to that effect. The record will show.

Exam. McGRATH. Ten to fourteen boats, I believe he said.

Mr. FOSTER. The inference is that that is their plan, and that they will go through with it, and I think this line of examination is perfectly pertinent, in view of the testimony of Mr. Emblidge, and also that of the other witness; and I am perfectly willing to make him my own witness, for the purpose of this examination.

Exam. McGRATH. Well, I just wanted to be sure that you had completed your cross-examination, before you made him your own witness.

Mr. FOSTER. Oh, yes, your Honor, we have completed the cross-examination.

Mr. SULLIVAN. I thought he had, your Honor. The witness is now Mr. Foster's own witness.

Mr. FOSTER. Yes.

Exam. McGRATH. Well, I just wanted to be sure that the record was clear on that. You have completed all of your cross-examination of the witness now, have you?

Mr. FOSTER. Yes.

Exam. McGRATH. And you are now examining the witness as though on direct examination?

577 Mr. FOSTER. Yes.

Exam. McGRATH. All right. You may answer the question, then, as a witness for protestants.

Mr. FOSTER. Yes.

The WITNESS. What is the question?

Mr. SULLIVAN. Just a moment. Is your Honor overruling my objection?

Exam. McGRATH. Yes.

Mr. SULLIVAN. I did not understand.

The WITNESS. What is the question?

Exam. McGRATH. Read the question, please.

(Question read.)

Mr. ELDRED. If the Examiner please, I would just like to make this one observation, that if we are going to go into this particular line of questioning, we are going to be here for a long, long time. I think that is perfectly apparent. What this company may have in the bank at the present time does not throw any light upon what the situation of the company may be when the war is over. Nobody knows now what conditions may be then. It is all problematical.

Exam. McGRATH. Your argument can be made from the testimony. Go ahead.

A. Well, any figures that I might present here would be purely from memory, and without any documentary evidence to support them at this time.

578 By Mr. FOSTER:

Q. Well, did the May 1943 statement of the company go across your desk, the balance sheet for that month?

A. For the month of May?

Q. Yes.

A. Not that one.

Q. Not that one?

A. No, sir.

Q. Well, then, when was the last monthly statement of the company that went across your desk?

A. For the month of April.

Q. April?

A. Yes, sir.

Q. Well, will you answer that question, to the best of your knowledge, based upon that statement, then?

A. I could if I had it before me.

Q. Those being the latest available figures, as far as you are concerned?

A. If I had it before me, I could.

Q. Well, then, will you give us the best of your recollection, as to what that was?

Mr. SULLIVAN. Perhaps I can help you. Here is the projected balance sheet that went to the stockholders.

A. Any answer that I might give you to that question, the way in which you have phrased it, certainly will not indicate any financial condition of the company as of tomorrow,

579 even, by reason of the fact that four of the vessels that

have been requisitioned, have not as yet been paid for. Now, as to what that amount will be, I do not know.

Exam. McGRATH. But with the exception of that——

Mr. FOSTER. Yes.

Exam. McGRATH. Can you answer the question?

By Mr. FOSTER:

Q. You know what you were paid for the first ten, do you not?

A. Yes.

Q. What was it?

A. We have $1,250,000 worth of government bonds, right now.

Q. $1,250,000 of government bonds?

A. Yes, sir.

Q. Does the statement also show your liabilities?

A. Yes.

Q. What does it show?

A. Well, at the present time I believe that we owe less than $5,000, which would be just merely small current bills.

Q. $5,000?

A. Yes, sir; which will be liquidated on approximately the 10th of June. We have a cash balance in the bank to pay them.

Q. And you have outstanding $1,157,800 of 7 percent cumulative preferred stock; is that correct?

A. Yes, sir.

Q. This letter that has been referred to here, was the
580 letter that was addressed to your stockholders, as I understand it.

A. Yes, sir; and the figures that are indicated there are still substantially correct?

Q. They are still substantially correct?

A. Yes, sir.

Q. Now do you have any idea as to what new ships would cost to build?

A. That would be contingent entirely on the type, the tonnage, and so forth; that is, as to whether you are going to build 5,000 ton vessels, or 15,000-ton vessels.

Q. I am talking now about the particular type of vessels that you contemplate building.

A. That I could not say.

Q. You do not know, then, what type of ships they will be?

A. No, sir.

Q. Now I see that you have here, among your assets of $3,063,000, floating equipment, four vessels, $997,267.02.

A. Yes.

Q. That is in the statement as of December 31st.

A. Yes; and that is the situation today.

Q. That is what you have them on your books for?

A. Yes, sir.

Q. As a matter of fact, for the vessels which were requisitioned by the government, you got only an average of $190,000 apiece; is that correct?

581 A. Yes.

Q. Did any of these last four vessels have reefer space?

A. Yes, sir; a small amount—with the exception of two; the Sargent and Utica had no refrigerator capacity at all.

Q. They had no refrigerator capacity at all?

A. No; but the other two did.

Q. But it was not used?

A. Well, not at the end of the season, no, sir, because they were ordered by the Office of Defense Transportation to operate in the grain trade; but the refrigerators were serviceable.

Q. They were serviceable?

A. Oh, yes, indeed, and they were used earlier in the season.

Q. Now, as a matter of fact, do you know whether or not the reason that the War Shipping Administration is not settling for the ships that were taken last fall, is because you were paid too much for the earlier ships which were taken?

A. Are you speaking of our ships?

Q. No; ships generally.

Mr. EISEN. Objection.

By Mr. FOSTER:

Q. And that is holding up the settlement?

Mr. EISEN. Just a moment.

Exam. MCGRATH. Read the question, please.

(Question read.)

Mr. EISEN. Objection.

Exam. MCGRATH. Objection sustained.

582 By Mr. FOSTER:

Q. What was the basis of setting up in this December 31st statement, the amount of $997,267.02 for those four ships?

A. That was the cost.

Q. The cost——

A. Yes.

Q. —— of those ships?

A. Yes, sir.

Q. And when that was set up, you did not have any idea, yourself, knowing the manner in which you had settled before, of getting that much money for those ships from the War Shipping Administration, did you?

A. No. You guess.

Q. Well, I am asking you now. You did not have any idea that you would get that much, did you.

A. No, sir. I say, you guess. It is just a guess, one way or the other.

Q. You cannot tell us now, of course, as to what your situation will be after the war is over, as to whether you will have any money to buy ships with or not, can you?

A. I believe that has been covered before.

Q. All right. Now I understand, from this statement from which you have been reading here, that your estimated loss for 1942 operations was $170,000.

A. Yes. What about it?

583 Q. That was your estimated loss for 1942, was it?

A. Estimated.

Q. That is what I say.

A. Right.

Q. Do you know what it actually was?

A. Yes; in round figures.

Q. What was it, in round figures?

A. $200,000.

Q. $200,000?

A. Yes, sir.

Q. And if you continue at that rate of loss, to lose money at that rate, as shown by your various exhibits, by the time the war is over, if it last very long, you will not have any money left; that is correct, is it not?

Mr. EISEN. Just a moment.

Mr. SULLIVAN. I object.

Mr. ELDRED. I object.

Exam. MCGRATH: Sustained.

Mr. FOSTER: Oh, if the Examiner please, I submit that is a pertinent question.

Mr. EISEN: Counsel is just arguing with the witness, now.

Exam. MCGRATH: Yes, you are arguing with the witness. You are making your deduction, and asking him to assent to it.

Mr. FOSTER: No. I am merely asking him a question, which he can answer by yes or no.

584 Mr. LEWIS. As I understand it, Mr. Examiner, this examination of the witness is direct examination, now, and not cross examination, but the questions that Mr. Foster has been asking of the witness are more in the form of cross-examination, rather than direct.

Exam. MCGRATH. Are there any further questions of the witness on direct?

Mr. FOSTER. Do you mean, on cross?

Exam. McGRATH. No, I mean on direct examination. The witness is your witness now, you must remember.

Mr. SULLIVAN. You finished your cross-examination of the witness some time ago, you said.

Mr. FOSTER. That is right.

Exam. McGRATH. And the witness is now testifying as your witness, and has been for some time, now.

Mr. FOSTER. That is correct.

By Mr. FOSTER:

Q. Well then, let me ask you this question, Mr. Lyon: you have no knowledge at the present time of what you will be able to do after the war is over in the way of putting any boats in service on the lakes at all; that is correct, is it not?

A. Yes, sir.

Mr. FOSTER. That is all.

Exam. McGRATH. Is there anything on redirect?

Mr. SULLIVAN. Yes, please.

585 Redirect examination by Mr. SULLIVAN:

Q. Mr. Lyon, with respect to the suggestion of Mr. Foster, as to past losses, directed to the argument that he hopes to make: the losses which have been set up in your Exhibit No. 30 were losses from full line company operations, were they not?

A. Yes, sir.

Q. And your company at the present time is not operating at all, is it?

A. No.

Mr. SULLIVAN. Thank you.

Exam. McGRATH. Are there any further questions?

Re-cross-examination by Mr. FOSTER:

Q. Will you tell me, please, how your company lost $200,000 in 1942, if your company is not operating at all?

A. This is 1943.

Q. All right. Well, do you mean, then, that your full line operations accounted for that loss of $200,000 in 1942?

A. No, sir; only a partial operation, because of the fact that, as Mr. Emblidge testified, the vessels were taken starting in June, and then in July, and so forth, on until November, when all of them were gone.

Q. The Great Lakes Transit Corporation, as I understand it, now, is not in operation at all; is that correct?

A. Not in lake transportation.

586 Q. Not in lake transportation.

A. No.

Mr. FOSTER. I think that is all.

Mr. SULLIVAN. I know it is all, as far as I am concerned.

Exam. MCGRATH. You are excused.

(Witness excused.)

Exam. MCGRATH. We will recess at this time until two o'clock this afternoon.

(At 12:45 p. m., recess taken until 2:00 o'clock, p. m.)

AFTERNOON SESSION

The hearing was resumed pursuant to recess. 2:00 P. M.

Exam. MCGRATH. Come to order, please, gentlemen. The hearing will now be resumed. Have you any further evidence to present, Mr. Sullivan?

Mr. SULLIVAN. No, sir.

Exam. MCGRATH. Who is next?

Mr. EISEN. I have some.

Exam. MCGRATH. You may proceed.

Mr. EISEN. Mr. Hughes.

Exam. MCGRATH. Has this witness testified before?

Mr. EISEN. No.

LEWIS HUGHES was sworn and testified as follows:

587 Direct examination by Mr. EISEN:

Q. State your name.

A. Lewis Hughes.

Q. Your address.

A. 1950 East 105th, Cleveland.

By Exam. MCGRATH:

Q. Cleveland, Ohio?

A. Yes, sir.

By Mr. EISEN:

Q. With what company are you affiliated?

A. Hughes-Burnett, Inc.

Q. What is that company?

A. We are direct Chrysler dealers on Dodge-Plymouth, and Dodge trucks.

Q. That is, Dodge passenger automobiles?

A. Right.

Q. And Plymouth passenger automobiles.

A. Yes, sir.

Q. And Dodge trucks.

A. That is correct.

Q. How long have you been a dealer in automobiles?

A. Oh, I have been a dealer for about eight or nine years, now,—that is, under this particular firm name.

Q. And prior to that time, you were also a dealer, but under a different name, were you?

A. No, sir; before that I wasn't a dealer, but I was connected with a dealer organization, as part of a dealer organization.

588 Q. I see. Now who routes the Chrysler products which your firm obtains from the Chrysler factory from Detroit to Cleveland?

A. By boat?

Q. Yes.

A. Or any way?

Q. Any way. With respect to transportation, who provides the method of transportation, or who instructs the factory with respect to the method of transportation is to be employed?

A. The dealer does, in our case, in our line.

Q. That is, you instruct, as to the routing?

A. Yes, sir.

Q. You give the instructions as to the routing of the products?

A. Yes. They ask for it.

Q. They ask for it, do they?

A. Yes, sir.

Q. Who pays the freight charges on such transportation?

A. We do; we pay them direct.

Q. Do you know whether or not, of your own personal knowledge, all Chrysler dealers route their own traffic and pay their own freight charges?

A. I can answer that question by saying that all of the Dodge dealers do; yes, sir, of our division. However, I know nothing about the others, you see.

Q. But you do route the traffic and pay the freight charges on your Plymouth automobiles, do you?

589 A. Yes.

Q. What have you to say, Mr. Hughes, with respect to the year 1941, as to whether it was a good year, a fair year, a very good year, or what?

Mr. Foster. With respect to his own individual business, I take it you mean?

Mr. Eisen. With respect to his own individual business; yes. That is all he is testifying about.

Mr. Foster. All right.

A. Oh, it was one of the best, I would say, but do you mean, now, as to the number of cars, or profitwise?

By Mr. Eisen:

Q. The number of cars sold.

A. It was one of the best years that I can recall.

Q. How were your automobiles routed last year, during the season of open navigation—that is, your automobiles and trucks?

A. Do you mean by "last year"——

Exam. McGRATH. 1942.

By Mr. EISEN:

Q. I mean, 1942.

A. Well, I would say that about 70 percent of our cars were routed by boat; and the others were driven, or hauled, during the extreme winter months.

Q. With respect to the 70 percent that moved by boat, can you give us some idea of what boat lines handled them?

A. Nicholson-Universal, I would say, handled about 60 percent of them; and the Detroit & Cleveland Navigation,
590 about 10 percent.

Q. What have you to say with respect to the service, the water service, which you received in 1941?

A. Good.

Q. The service was good?

A. Yes.

Q. Insofar as your products and the service which you have received in your particular connection in the way of water transportation are concerned, would you say that, in your opinion, there was any need for any additional carriers in the field?

Mr. FOSTER. Just a moment. May I hear that question again, please, Mr. Reporter.

(Question read.)

Mr. FOSTER. I object to that question, if the Examiner please. I do not think that this witness is qualified to answer a question of that kind.

Mr. EISEN. I have specifically limited it to his own particular business, and his own personal knowledge. I purposely restricted it to his own business, just so that it would not be objectionable.

Mr. FOSTER. Do you mean by the question, in his opinion, is there any other transportation facility needed to transport his particular automobiles?

Mr. EISEN. That is what I said.

591 Mr. FOSTER. All right. If the question is limited in that way, I do not have any objection.

Exam. McGRATH. Do you understand the question?

The WITNESS. Repeat it.

Exam. McGRATH. Read it, please.

(Question read.)

A. Why, I would answer that question by saying that we were taken care of promptly, and with good service.

By Mr. Eisen:

Q. Am I to construe that answer, then, Mr. Hughes, as meaning that you do not think there is a need for any additional service?

A. Well, I would answer that as I did before, by saying that we had no hold-up of the cars, but on the contrary, they came through very promptly, right on schedule.

Q. And the service was satisfactory?

A. Yes, sir.

Mr. Eisen. That is all.

Exam. McGrath. Cross-examine.

Cross-examination by Mr. Foster:

Q. How many cars did you ship during the year 1941 between Detroit, Michigan, and Cleveland, Ohio, by boat?

A. We sold—or we received from the factory over——

Q. That is not the question.

A. I will answer the question—800 cars. I do not know now just exactly the amount; but it was over 800 cars, anyway.

592 Now, approximately 70 percent of those cars were shipped by the water route.

Q. What percent?

A. About 70.

Q. How long was this water service available to you?

A. Do you mean, during the year 1941?

Q. Yes; how long during the year; what length of season of navigation did they have during 1941?

A. Why, I think that the boat service starts in in March sometime, if I recall it correctly; and I don't recall the date exactly, but it ends somewhere around December the 1st. I don't recall the date, the exact date now, on either end, as far as that is concerned.

Q. On the Cleveland run, they usually run to December the 12th, do they not?

A. I said, about December 1st.

Q. All right.

A. I couldn't give you the exact date.

Q. So that you have, then, actually, about a nine-month service, service over the period of about nine months; is that correct?

A. I guess that is what it would figure.

Q. And you shipped out roughly some 60 cars per month by water; is that correct?

A. Yes.

593 Q. Are you familiar with the vessels, or were you familiar with them, that the Detroit & Cleveland Navigation Company was operating in 1941?

A. The type of boats?

Q. Yes, on the Detroit-Cleveland run.
A. No, sir.
Q. You never saw them?
A. No, sir.
Q. Well, it has been developed clearly in the record here that three of the vessels which the Detroit & Cleveland Navigation Company was operating in 1941, were owned by these applicants.
A. I wouldn't know.
Q. You do not know anything about that?
A. No, sir; not at all. That wouldn't be any of my concern. I wouldn't know who owned the boats.
Q. And you would not know what percentage of the 10 percent that the Detroit & Cleveland Navigation handled, was transported on their own vessels, or what percentage was transported on vessels that belong to the applicants here, would you?
A. No, sir; I wouldn't be able to say that, because I wouldn't have any way of knowing that.
Q. In your movement of, roughly, two cars per day, you do not see the necessity for putting on any additional service, do you?
A. No.
594 Q. From the experience that you had in 1941.
A. No, sir; I really don't. I would say that the service we got, was good service.
Q. They were always able, somehow or other, to give you fairly good dispatch on your two cars per day, were they?
A. Yes.
Mr. FOSTER. That is all.
Exam. MCGRATH. Are there any further questions of the witness?
Mr. EISEN. Nothing.
Exam. MCGRATH. That appears to be all. You are excused.
The WITNESS. Thank you, sir.
(Witness excused.)
Exam. MCGRATH. Next witness.
Mr. EISEN. Mr. Feder.
Exam. MCGRATH. Has he been a witness before?
Mr. EISEN. No.
Exam. MCGRATH. Be sworn, please.

MARCUS FEDER, JR., was sworn and testified as follows:

Direct examination by Mr. EISEN:

Q. Please state your name.
A. Marcus Feder, Jr.
Q. Your address.
A. 4600 Euclid Avenue, Cleveland Heights, Ohio.
595 Q. With what company are you connected?

A. Dowd-Feder, Inc.

Q. What is that company?

A. Chrysler-Plymouth automobile distributors in northeastern Ohio.

Q. When you obtain your Chrysler products from the factory, who routes the cars?

A. We do.

Q. Who pays the freight?

A. We do.

Q. During the season of 1941—or rather, first, let me ask you this question, as to whether the year 1941 was a good year, a fair year, or a very good year so far as your company was concerned?

A. It was the best year that we have ever had.

Q. During the open season of navigation in 1941, did you use water service?

A. Yes.

Q. What lines did you use?

A. Nicholson Steamship.

Q. Do you know how many cars you sold and received during 1941?

A. Well, we sold seven thousand in, and we shipped five thousand out, by water.

Q. And they all moved Nicholson-Universal, did they?

A. Yes, sir.

596 Q. Now, what have you to say, Mr. Feder, with respect to the service which you received during 1941 from the Nicholson-Universal Steamship Company?

A. It was very satisfactory.

Q. Did you have any delays, or any hold-ups?

A. No.

Q. Did you have any serious complaints?

A. None.

Q. Or any complaints of any nature whatsoever?

A. No.

Q. Now predicated upon your own experience in 1941, insofar as your own particular business needs were then concerned, do you know of any reason why any additional boats or boat lines were or are needed to carry automobiles?

A. Not for our needs; no, sir.

Mr. EISEN. That is all.

Exam. MCGRATH. Cross-examine.

Cross-examination by Mr. FOSTER:

Q. You say that insofar as your own personal knowledge is concerned, you do not have any delays in the case of vessels remaining here on the dock; is that correct?

A. In the case of what?

Mr. EISEN. Cars, do you mean?

By Mr. FOSTER:

Q. I mean cars; yes.

A. No, sir; we do not. We receive our invoices, and pay
597 our bills, and the cars come through, as I stated before, within a reasonable length of time.

Q. Well, I see. The Chrysler-Plymouth Corporation does reserve the right, under its franchises and contracts, to do the routing, if it deems it necessary, does it not?

A. No, sir; not as far as I know. They give us the right to route the cars as we see fit.

Q. But they also reserve the right, if they see fit, to do the routing themselves, do they not?

A. No.

Q. They do not?

A. No, sir.

Q. You disagree, then, with Mr. Brennan's testimony in that respect?

A. If that is what he said.

Q. He testified——

A. I don't know what he did testify.

Mr. EISEN. What testimony?

A. (Continuing.) But I wouldn't know why there would be any question about that, at any rate.

Mr. FOSTER. He testified that they do reserve that right.

Mr. EISEN. I do not think so.

Mr. FOSTER. Oh, yes, he did; in the Nicholson Transit Case, which is in this record.

Mr. EISEN. The Nicholson Transit Case is not in this
598 record.

Mr. FOSTER. Oh, yes; it is. You stipulated it all in.

Exam. MCGRATH. Off the record.

(Discussion outside the record.)

Exam. MCGRATH. Back on the record.

By Mr. FOSTER:

Q. At any rate, Mr. Witness, if Mr. Brennan did testify that the Chrysler Corporation does reserve the right, in its discretion, to route cars, you would say that that did not apply to your particular franchise with Chrysler, or Plymouth; is that correct?

A. If you will permit me—I mean, now, if this could be off the record, if that is agreeable——

Exam. MCGRATH. No. We want it on the record, if it is germane to the issues.

The WITNESS. Well, I can tell you what the practice of the corporation is, although we have never had any experience along that particular line.

By Mr. FOSTER:

Q. All right, then; would you mind telling us, please, what the practice of the corporation is.

A. The practice is that if the dealer does not pick the car up, the Chrysler Corporation will give it another routing. I understand that to be the practice.

Q. But in the case of your particular cars, as far as they are concerned, you say that, as far as you know, you did not have any unusual delay or difficulty in moving them; is that right?

599 A. Right.

Q. And you received about five thousand cars over a period, I assume, of approximately nine months; is that correct?

A. Yes, sir.

Q. Which, if all loaded on one boat, would be a little bit more than one boatload per month, would it not?

A. Well, no, sir. Our cars come through regularly, every day; we get our automobiles every day.

Q. You get some cars every day?

A. Yes.

Q. What was your position with Dowd-Feder in 1941?

A. Our position?

Q. No; your position.

A. With the corporation?

Q. Yes.

A. Vice president.

Q. Vice president of the corporation?

A. Yes, sir.

Q. Did you have direct charge of the traffic end of the business of the corporation—that is, the movement of its cars?

A. Why, in part directly, and in part indirectly, I would say, but I am familiar with it.

Q. You moved your cars exclusively, did I correctly understand you to say, over the Nicholson-Universal Steamship Line?

A. By water.

600 Q. You did not ship any cars over the D. & C.?

A. Why, there might have been some; yes, sir; but then only in isolated cases. I don't believe that there was as many as a dozen automobiles, even, that were handled that way.

Q. Well, why did you ship that particular dozen automobiles, if it was as many as a dozen, over the D. & C., if you recall, or if you have any knowledge as to that?

A. I couldn't say.

Q. Pardon me?

A. I couldn't recall.

Q. Who was in charge for the Dowd-Feder Corporation, if cars were delayed to any unusual degree, to check up on them and see that they moved forward promptly, just as they were shipped, every day?

A. Oh, we have a department that we call the Car Department, the New Car Department.

Q. New Car Department?

A. Yes, sir.

Q. And who was in charge of the New Car Department of the corporation?

A. A Miss Green.

Q. Miss Green?

A. Yes.

Q. Was she directly responsible to you?

601 A. Well, it was just done automatically. Those cars were delivered to Automobile Shippers, and they in turn delivered them to the boats.

Q. Who are Automobile Shippers?

A. Automobile Shippers is our transportation company in Detroit.

Q. Your transportation company?

A. Well, the transportation company that we retained at the Chrysler plant, to deliver the cars to the boat. The cars had to be delivered to the boat, of course.

Q. Yes. And then they in turn were delivered to Cleveland by the Nicholson-Universal Steamship Company.

A. Yes, sir.

Q. You have no personal knowledge, of course, of what difficulties other distributors may have had, or what difficulties the factory may have had, in the way of delay on the docks, have you?

A. No.

Q. Were cars ever held over here in large quantities, in large numbers?

A. No.

Q. As far as you know, referring again to the twelve cars that you say were shipped via the D. & C., it was not necessary to divert those cars, as the testimony shows that it was in other instances, because Nicholson-Universal could not move them, was it?

602 A. Well, I am not familiar with the odd cars that might have been shipped elsewhere.

Q. As far as you know, then, the cars that were diverted to the D. & C., might have been diverted that way because of the fact——

Mr. EISEN. Just a moment.

The WITNESS. They may have been taken down there by accident. I wouldn't be able to tell you now.

Mr. EISEN. Just a moment, please. I object to that question, if the Examiner please. Nobody said those cars were diverted.

Mr. FOSTER. Oh, yes; there is such testimony in the record.

Mr. EISEN. This witness did not say that the cars were diverted.

Mr. FOSTER. Just a moment. Listen to the question.

Mr. EISEN. I object to any cross-examination that does not follow the direct testimony. I qualified this witness with respect to his own activities only.

Mr. FOSTER. But the witness said that he did ship some cars over the D. & C.

Mr. EISEN. He did not say anything about their having been diverted.

Mr. FOSTER. I am merely asking him whether they were or not.

Mr. EISEN. He said he did not know. You are assuming something in your question.

Exam. MCGRATH. My understanding of the answer of the
603 witness to your question was that he does not know.

The WITNESS. Yes.

Exam. MCGRATH. Do you want to pursue the matter further, in the light of that answer?

Mr. FOSTER. Yes, if your Honor please, only to the extent of one or two further questions.

Exam. MCGRATH. Very well.

Mr. FOSTER. Which I think I have a perfect right to do.

Exam. MCGRATH. Go ahead.

By Mr. FOSTER:

Q. In so far as your own personal knowledge is concerned, Mr. Feder, these cars which you say were shipped by the D. & C. may have been some of the cars that Mr. Brennan testified concerning, that had to be delayed because of the inability of Nicholson-Universal Steamship Company to move the cars promptly. Is that correct?

A. No, sir; that is not correct. If they did get any, I would say that it was purely by accident, that the driver took them to the wrong dock.

Q. Do you mean to say that Auto Shippers would take cars that were destined for the Nicholson-Universal dock, to some other dock?

A. New drivers might; yes.

Q. Do you think that if they did take cars down to the D. & C. that were marked for Nicholson-Universal, D. & C. would accept those cars?

604 A. We are friendly with both companies.

Q. You are friendly with both companies?

A. Yes.

Q. But would the D. & C. accept an automobile from Auto Shippers that was routed via Nicholson-Universal?

A. Yes.

Q. In the face of the instructions by you to the factory, to ship via Nicholson-Universal—in violation of those instructions?

A. That is in the hands of Automobile Shippers.

Q. I though you said——

A. We ship via Automobile Shippers.

Q. Did you not testify a little earlier in your testimony here, Mr. Feder, that in connection with the handling of your Chrysler and Plymouth automobiles, you, as a distributor, have control of the routing of those cars?

A. Yes.

Q. Well then——

A. We do, but then, we have got to have them taken to the boat.

Q. Well, what were your instructions to the Chrysler Corporation with respect to the routing of those cars?

A. Our instructions to Chrysler was to deliver the cars to Automobile Shippers.

Q. To deliver them to Automobile Shippers?

A. Yes, sir; in the case of Chrysler. In the case of the
605 Plymouth Corporation, they take the cars down there free of charge.

Q. Well then, so far as you are concerned, Auto Shippers could take those cars any place they wanted to; is that correct?

A. To the boat.

Q. Yes, that is what I say, either to the D. & C., or to Nicholson-Universal, or anywhere else; is that correct?

A. No, sir. Automobile Shippers receive them from the Chrysler Corporation, and take them the way they are routed, except in the case of an accident, while the Plymouth Corporation, as I say, takes the car down free of charge.

Q. Well then, you do not have any instructions which you have placed with the Chrysler Corporation, to deliver those cars to Nicholson-Universal; is that correct?

A. The Chrysler Corporation, I believe, has a letter to deliver our cars, the Plymouth motor car, to the Nicholson-Universal Steamship Company dock; and the Chrysler Corporation—or rather, I should say, the Chrysler Sales Division, has a letter authorizing it to deliver all of our cars to Automobile Shippers.

Q. They have a letter authorizing them to deliver all of your cars to Automobile Shippers?

A. Yes, sir.

Q. And you think that those cars that went by way of the D. & C., were handled that way because Auto Shippers made a mistake and delivered them at the wrong dock; is that correct?

A. I presume so.

606 Q. But you do not know?

A. No.

Mr. FOSTER. That is all.

Exam. MCGRATH. Are there any further questions of the witness?

Mr. EISEN. Yes.

Re-direct examination by Mr. EISEN:

Q. If you had any unusual delays, Mr. Feder, in the movement of your automobiles, in other words, if your automobiles were tied up at the Detroit docks for a matter of some five or six or eight or ten days, would you know about that?

A. Certainly.

Q. In 1941, if your cars were tied up in Detroit, on the docks here, would your people have known about that?

A. Oh, yes.

Q. They would?

A. Yes, sir.

Q. And would you know about it?

A. Yes.

Q. Would it have been reported to you?

A. Yes, sir. We certainly would know about it, if there was anything of that sort happened.

Q. Has a situation of that sort ever been brought to your attention?

A. No.

607 Mr. EISEN. That is all.

Re-cross-examination by Mr. FOSTER:

Q. Mr. Feder, how long would you say that a car would have to be here on the dock at Detroit, before you would say that it was tied up, or consider that it was tied up on the dock?

A. Well, that would depend, I would say, upon the demand, the public demand, just at that particular time.

Q. As a matter of fact, if you had a lot of Plymouth or Chrysler automobiles on hand in your showroom, or in your warehouse, or on your lot, your cars could sit on the dock for a considerable period of time, could they not, without your feeling they were being tied up? That is correct, is it not?

A. Yes.

Q. And that is what you mean, when you refer to the public demand; is that correct?

A. Yes, sir; but always within reason, of course. For example, if cars came through dirty as a result of having been on the dock any period of time, we certainly would have reason to complain; but that is another story, perhaps.

Q. Well, can you give us some idea—or rather, let me ask you this question: assuming you had a two weeks' supply of cars on hand in Cleveland. How long would you say that a car would have to remain on the dock here in Detroit before you would consider that car as having been tied up?

608 A. Oh, we would consider any car as being tied up that would be on the dock much over four or five days.

Q. Much over four or five days.

A. Yes, sir.

Q. But you do not actually know, yourself, what the conditions on the docks here at Detroit were at that time, do you?

A. The conditions on the docks?

Q. Right.

A. Why, no, sir; I wouldn't be able to say as to that, but I know that the condition of the cars, when they came in, was all right.

Q. When you got them, they were all right?

A. Yes, sir.

Q. At Cleveland.

A. Yes, sir.

Q. If you had a two or three weeks' supply of cars on hand at Cleveland, you might have had cars that were on the docks here for two or three weeks, or in the warehouse here for two or three weeks, might you not?

A. No.

Q. Well now——

A. We never had any occasion like that.

Q. How do you know that?

A. Well, because you might have a two weeks' supply of cars on hand in volume, but not in body stock.

609 Q. Not in what?

A. Not in body stock—that is, taking all of the combined combinations, upholstery combinations, radio, heater equipment, and so forth.

Q. But it could of course have been possible for the very ones that were tied up here, to be the ones that you did have a supply of on hand; is that not true?

A. I didn't get that.

Exam. McGRATH. Read the question, please.

(Question read.)

A. Well, if I understand your question right, if we had had any reason to complain, we certainly would have complained, but we didn't.

By Mr. FOSTER:

Q. You do not recall any complaint being made?

A. Never.

Mr. FOSTER. That is all.

Exam. MCGRATH. Are there any further questions?

Mr. EISEN. Nothing.

Exam. MCGRATH. You are excused.

(Witness excused.)

Exam. MCGRATH. Next witness.

Mr. EISEN. Recall Mr. Arnold.

Exam. MCGRATH. This witness was previously sworn, was he?

Mr. EISEN. Yes.

Exam. MCGRATH. You understand that you are still testifying under oath here.

610 Mr. ARNOLD. Yes, sir.

J. M. ARNOLD recalled.

Direct examination by Mr. EISEN:

Q. Your name is J. M. Arnold.

A. Yes, sir.

Q. Just so that the record will be clear at this particular point, what is your title, Mr. Arnold?

A. General freight agent, Detroit & Cleveland Navigation Company, in this city.

Q. How long have you been general freight agent?

A. Pretty close to two years.

Q. Now, did anything unusual occur in 1942 to disrupt your automobile transportation?

A. Yes.

Q. What was it?

A. We had two boats in the service, the "Greater Buffalo" and the "Greater Detroit." The navy took over the "Greater Buffalo" and made an aircraft carrier out of it, so that disturbed our transportation in 1942.

Q. How often did you have sailings between Detroit and Buffalo in 1942 prior to the taking over of that boat?

A. Every night; over-night.

Q. And after the boat was taken over, what service did you have?

611 A. Three times a week.

Q. And did that automatically and drastically cut down your automobile carrying capacity?

A. Oh, yes.

Q. Now, in 1942—or in the current year, what is the situation with respect to your service between Detroit and Buffalo?

A. Did you say 1942?

Q. 1943.

A. Oh, this year we are operating two boats in the service, the "Greater Detroit" and the "Eastern States."

Q. And what is the frequency of your service?

A. Every night; over-night.

Q. What is your present automobile carrying capacity of army jeeps and trucks between Detroit and Buffalo?

A. Well, that will vary, of course. We can haul considerably more jeeps than we can trucks or ambulances.

Q. How many jeeps can you handle a day?

A. Oh, we can handle more on the "Greater Detroit" than we can on the "Eastern States." I assume our average would be possibly in the neighborhood of about 125 jeeps.

Q. 125 jeeps.

A. That would be about the average, yes, sir.

Q. And how many ambulances?

A. Oh, I would say that the ambulances will run—well, possibly in the neighborhood of 75.

612 Q. And how about the trucks?

A. Oh, they will run in the neighborhood of possibly 50 two-and-a-half-ton trucks.

Exam. McGRATH. I am afraid that you are talking a little bit fast. We are not in any such hurry. Take it a little slower, if you will, please.

The WITNESS. I am sorry.

By Mr. EISEN:

Q. Have you notified the army, and the various other governmental bodies, of your capacity this year?

A. Yes.

Q. And have you solicited the movement of ambulances, jeeps, and trucks?

A. Yes, sir. They have come to us, as a matter of fact.

Q. And have you been given any indication that you will carry any of these vehicles?

A. Oh, yes.

Q. How many?

A. Well, we are right now lined up to move about 600 two-and-a-half-ton trucks, and about 225 jeeps. That is not all of the movement, however. There will be more later on.

Q. Do you think that your facilities will be able to adequately take care of the army needs, with respect to jeeps and trucks, during 1943, or do you have any information as to that?

A. Why, I believe so, yes, sir, from all of the information that I have available at the present time. Unless I am mis-

613 taken, and I do not think I am, I think that we will be able to take care of them very nicely.

Mr. EISEN. That is all.

Exam. MCGRATH. Cross-examine.

Cross-examination by Mr. FOSTER:

Q. These figures that you have given us here, of 125 jeeps, 75 ambulances, and 50 trucks—those were the figures which you gave us, were they not?

A. 225 jeeps.

Q. 225?

A. Yes.

Q. I thought you just got through telling us that you could take 125 in one load.

A. Oh. I misunderstood you. I thought you meant the total amount that has been lined up for our movement.

Q. No. What you could carry would depend on whether or not you had other freight on the deck, would it not?

A. We are figuring, with freight on, that we will be able to transport that amount of equipment—that amount of vehicles.

Q. With freight on?

A. Yes.

Q. You will be able to take that amount?

A. Yes, sir.

Q. How many can you take on the smaller boat?

A. Well, that number would be reduced very materially.

614 This is an average of the two, you understand.

Q. How many can you take on the smaller boat, is my question. You ought to know that, if you are traffic manager of your company.

A. Well, now, I don't think that being traffic manager would have anything to do with that. That is purely a question of operation, and not traffic.

Q. Well, then, can you answer my question? Do you know how many you can take on the smaller boat?

A. (No answer.)

B. Do you know, or do you not know?

A. I wouldn't want to try to say definitely as to how many could be handled on the "Eastern States"; no, sir. As I explained before, I was giving you the average of the two.

Q. Well, now, how are you able to arrive at an average for the two of them, if you do not know how much one of them carries?

A. Why, simply having gone into the matter very carefully with our own people, and also having the representatives of the army sit down with me, and going into the matter in detail with them,

so that it is not a guessing proposition at all, but it is an actual fact.

Q. Well, now, let us see whether it is or not. How many can you carry on the bigger boat?

A. How many what?

Q. How many jeeps can you carry on the deck of the
615 "Greater Detroit"?

A. On the deck?

Q. Yes.

A. Well, it wouldn't be on the deck, because we don't carry any of them on the deck. We carry them below deck.

Q. It has a freight deck, has it not?

A. A freight deck?

Q. Yes.

A. Yes.

Q. Well, how many——

A. Oh, I would say in the neighborhood of maybe 155.

Q. 155 jeeps?

A. Oh, yes; possibly more.

Q. How many ambulances?

A. Maybe 80 or 90.

Q. And how many of the two-and-a-half-ton trucks?

A. Well, that would be hard to say.

Q. Approximately?

A. I gave you the average for the two boats together.

Q. Yes; I heard you say that. You could not carry any trucks if you were loaded down with jeeps, of course, could you?

A. Well, now, these vehicles are not going to be fed to us as fast as all that, you understand.

Q. How are they——

A. (Continuing.) They are going to be given to us, a
616 certain number per day.

Q. Do you mean that the jeeps, for example, are going to be given to you, a certain number per day?

A. I don't think that we are going to get them all at once.

Q. How are you going to get them?

A. They are going to be driven down to our dock.

Q. But how are you going to get them below, I mean?

A. As far as the volume is concerned, that will all depend, as I said before, upon how the army decides to move them.

Q. Well, then, you do not know whether you are going to get them all in one day or not, do you?

A. Oh, yes; I do. I know that we are not going to get them all in one day.

Q. But you say, that will depend upon how the army hands them to you.

A. Yes.

Q. So therefore you do not know that, do you?

A. They may give them to us 10 at a time, 25 at a time, or perhaps 50 at a time. They are going to build up a bank of them down there. But our ability to transport them is not predicated upon how many we can handle per day.

Q. It is not?

A. No, sir; it is not. As I say, they are going to build a bank of them down there, and they will come along from time to time, and we will take them as we can get them.

617 Q. What is the over-all length of one of these two-and-a-half-ton trucks?

A. That I wouldn't be able to say. I have never personally examined one of them.

Q. You do not know anything about how many of these things you can carry, except what somebody else has told you, then, do you?

A. Oh, yes, I do. We sat down with the representatives of the army, and between us we decided that that is what the capacity would be.

Q. But how were you able to decide that, if you do not know what the size of the units is?

A. Well, they will run—these trucks I am talking about now, will probably run in the neighborhood of 20 feet.

Q. What is the amount of deck space, in number of square feet, that is available, if you know?

A. That I don't know. You will have to ask somebody who knows the deck space.

Q. You do not know that.

A. No.

Q. And you do not know what the over-all length of the jeeps is, do you?

A. Offhand I don't know; no, sir.

Q. And you do not know what the over-all length of the ambulances is, either, do you?

618 A. Not offhand.

Q. Do you know the width of them?

A. No.

Q. Do you know the over-all width of the trucks?

A. No.

Q. You do not?

A. No, sir; outside of the fact that I understand the length of the trucks is approximately 20 feet.

Q. But you do not know that of your own knowledge?

A. Only what has been given me by the army.

Q. But you do not know offhand the over-all size of any of them, do you?

A. No, sir. I said before that I don't.

Mr. FOSTER. That is all.

Exam. MCGRATH. Are there any further questions of the witness?

Mr. EISEN. None.

Exam. MCGRATH. If not, you may be excused, sir.

The WITNESS. Thank you.

(Witness excused.)

Exam. MCGRATH. Next witness.

Mr. EISEN. Mr. Hewitt.

Exam. MCGRATH. You have been previously sworn in this proceeding, have you not?

Mr. HEWITT. Yes, sir.

619 Exam. MCGRATH. You understand that you are still testifying under oath here?

Mr. HEWITT. Yes, I understand.

F. L. HEWITT, Jr. recalled.

Direct examination by Mr. EISEN:

Q. State your name.

A. F. L. Hewitt, Jr.

Q. Your address.

A. Foot of 8th Street, Detroit.

Q. I believe you testified that you were vice president and general manager of your company?

A. Yes.

Q. Do you still occupy that position?

A. Yes, sir.

Q. At the present time, Mr. Hewitt, how many boats are being operated by your company on the Great Lakes?

A. Nine vessels.

Q. Name them.

A. The "Hewitt," "Sonoma," "Penobscot," "Coralia," "Crescent City," "Brown," "Sultana," "Sonora," and "Arthur Orr."

Q. Now, Mr. Hewitt, you have mentioned the "Penobscot," "Coralia," "Sonoma," "Crescent City," and "Hewitt"—is that correct?

A. Yes, sir.

Q. Are those five boats listed in Mr. McCarthy's Exhibit No. 33?

620 A. Yes.

Q. And they are presently being operated by the Nicholson-Universal Steamship Company, are they?

A. Yes, sir.

Q. What is your present intention as to the operation of the fleet of nine boats which you are presently operating, with respect to the postwar period?

A. Well, it is our intention that the present fleet of nine vessels will be in operation, operated by us, at the expiration of the emergency period.

Q. Have you already approached and made arrangements with the War Shipping Administration to reacquire those boats at the termination of the present hostilities?

A. Yes, we have. With the cessation of automobile production, and the interest in the vessels by the administration, or rather, by the government, at that time negotiations were entered into and discussions held as to the turning back of those vessels to us at the expiration of this emergency period, and those negotiations have been going on, and are more or less concluded in the form, may I say, a gentleman's agreement that at the expiration of the emergency those vessels are to be returned to us.

Q. What have you to say with respect to automobile transportation and its importance to your company?

A. Well, the Nicholson-Universal Steamship Company has made its name and its reputation entirely out of the move-
621 ment of automobiles. We are, and have been for the period of a good many years, a specialized carrier in this type of transportation. As I stated before, we have confined our activities to the movement of automobiles, up until the time of this present emergency; and with the cessation of the manufacture of automobiles, why, quite naturally those vessels have gone into the carriage of other products which are essential to the war effort.

Q. What is the intention of your company with respect to automobile transportation after the conclusion of the war?

A. Well, our intention certainly is to pick up where we left off, as I assume most other industries will. As I pointed out, our entire organization has been built up around the automobile business, and it is our intention therefore to go back into it when automobiles are again manufactured.

Q. What other changes, if any, have occurred on the Great Lakes since the last hearing in this proceeding which have a direct bearing on the availability of vessels for the transportation of automobiles, particularly after the conclusion of the present war?

A. There has been a very material change on the lakes within the past few weeks. You will recall that during the last hearings, there was a great deal of discussion concerning the bulk cargo carrier situation. By that I mean, prior to 1940 the bulk cargo carriers were utilized for the transportation of automobiles.

622 Q. You mean by that, do you not, that they were put on the spar decks of the bulk cargo carriers?

A. Yes, sir.

Q. Continue.

A. The automobile carriers under charter arrangements had the spar decks of the bulkers made available to them for the transportation of automobiles. This of course gave us a large pool of vessel space. These bulk cargo carriers always considered themselves exempt from regulation under the theory that they were contract haulers. Because of the pending water legislation in Congress which finally took the form of Part III of the Interstate Commerce Act, the bulkers were hesitant about carrying automobiles on their spar decks because of the theory that such carriage would jeopardize their claim that they were contract carriers, and therefore exempt from regulation. For this reason there were no automobiles carried on outside bulkers. We of course carried automobiles on the spar deck of our bulker fleet.

In March of this year the Interstate Commerce Commission, by its decision in the Columbia Transportation Company contract carrier application, Docket W-773, caused a complete change in the situation. In that decision the Commission found that the Columbia Transportation Company, and others in a like category, were common carriers in the transportation of commodities generally, except of course where they transported commodities

623 in bulk in full cargo lots for one shipper. To the extent that the bulk cargo carriers have been found to be common carriers, there is no longer any danger of automobile transportation on the spar decks affecting their status. As a result of that decision, we have contacted several of the bulk cargo carriers and negotiated with them for the carriage of automobiles on their spar decks, when and as automobiles are again manufactured and transported.

I can say that we have found a very receptive attitude on the part of the bulk carriers. As a matter of fact, our handling with one of the larger carriers has gone beyond the negotiation stages, and has practically reached a final settlement, the only thing that is left being the drawing up of the formal contract. This particular arrangement will make available to us a fleet of not less than ten boats. In addition to this one particular fleet, we have under way negotiations with other bulkers, and, all in all, we are pretty sure of having available to us when automobiles start moving, not less than thirty boats, with a reasonable certainty of more boats than will actually be required for the transportation of automobiles throughout the year, including the peak periods.

Right here, when I refer to peak periods, I am of course referring to the peak periods of the past. I do not know, and I doubt whether anybody knows, if there will be peak periods in the future, or how and when automobiles will be manufactured
624 and tendered for transportation after the war. My own personal opinion is that for a good many years the manufacture will be stabilized without changeover of automobile production, and that automobiles will roll off the assembly lines without the hills and valleys as shown on the transportation charts included in the previous exhibits in this case.

Q. Now, Mr. Hewitt, do you have any other statement that you desire to make for the record?

A. Not beyond again stating, at the risk of repetition, the fact that the Nicholson-Universal Steamship Company is known as a specialized carrier of new automobiles, and, with the cessation of hostilities, the Nicholson-Universal Steamship Company intends to see that, for such tonnage as may be offered to it for transportation over the lakes, vessels are available to adequately handle such tonnage which may be offered.

Q. Do you believe that you will be in a position to make available to the trade, the shipping trade, all of the facilities that will be required during the postwar period?

A. We do; yes, sir. We feel that we will be able to take care of the situation as it may unfold from month to month, or from year to year, as well in the future as we have in the past.

Mr. EISEN. That is all.

Exam. MCGRATH. Cross-examine.

Cross-examination by Mr. FOSTER:

625 Q. Mr. Hewitt, you applied for and recently obtained from Division 4 of the Interstate Commerce Commission, a report giving you not only automobiles, but general commodities, did you not?

Mr. EISEN. Just a moment. I object to that. We did not apply for general commodities.

Mr. FOSTER. Well, under the application which you filed, and under the testimony which was introduced——

Exam. MCGRATH. Do you know what the number of that docket is?

Mr. FOSTER. W–357.

Exam. MCGRATH. What is the date of the report?

Mr. FOSTER. May 15th, 1943.

Exam. MCGRATH. Now, Mr. Reporter, will you go back and read the question, please.

(Question read.)

A. I don't just exactly recall the phraseology of the application, as far as that is concerned, but I would assume——

Exam. McGRATH. We have reference to it.

Mr. FOSTER. Yes.

The WITNESS. All right.

Exam. McGRATH. That is sufficient.

Mr. FOSTER. Yes; that is sufficient.

The WITNESS. All right, sir.

By Mr. FOSTER:

Q. Now all that you have, as far as the five ships that were
626 sold to the War Shipping Administration are concerned, is a gentleman's agreement, as you have described it, that they will work out some deal with you after the war, if it can be worked out between the parties; is that correct?

A. No, sir; that is not correct. I think that it goes a little beyond that. In my capacity with the company I have had pass over my desk certain exchanges of correspondence, which will show that it goes beyond any mere conversational stage.

Q. But you do not have any definite written option, or any definite written agreement of any kind with the War Shipping Administration, outlining any basis on which you can reacquire those five vessels, do you?

A. There is no written option.

Q. That is what I say.

A. No.

Q. No. So that all that you have is conversation with somebody connected with the War Shipping Administration concerning the matter; that is right, is it not?

A. No, sir; that is not correct. Let me repeat what I stated to you before, that it goes beyond the conversational stage. As a matter of fact we have a rather complete file of correspondence with respect to the understanding.

Q. Have you been advised by the War Shipping Administration that when vessels are purchased by them they can dispose of them at public auction?

A. I have not been advised by anybody to that effect; no, sir.

627 Q. You have not?

A. No.

Q. You know, I take it, do you not, with respect to the Columbia decision that came out in March, or the report which came out in March, that the effective date of the order which accompanied it has been extended, and that the matter is going to be reconsidered by the full Commission?

A. Why, as I understand it, there is further evidence to be submitted, and the case is going to be reopened; yes, sir.

Q. And they were the only operator of bulk boats in Cleveland that even made application under Part III of the 1940 Transportation Act, were they not?

A. I would not know that.

Q. You do not have any definite agreement with any bulk operator as to the use of its vessels after the emergency, have you?

A. Well, we certainly do have a verbal understanding, and you might call it an agreement, as to their desires and their willingness to enter into an arrangement with us for the carriage of automobiles. As I stated before, it has not been reduced to writing, because the negotiations have taken some time, and it has been only rather recently that some of the points were decided upon, but in due course we assume that it will be reduced to writing.

Q. But right at the present time you do not have any
628 agreement with anyone with respect to the use of bulk vessels, either this year, or next year, or after the war, for the transportation of automobiles, have you?

A. I feel very definitely that we do have an agreement, although I will say that we do not have any written agreement.

Q. No.

A. (Continuing) As previously discussed, for obvious reasons.

Q. Now you say that this company has ten vessels. Which company is that?

A. I do not think I care to disclose as to whom I am carrying those negotiations on with. It is a competitive situation, and I am very sure you can realize that the disclosure of that information might prove rather detrimental to myself, or to my organization; and therefore I am very sure that you would not want me to do that here.

Q. But you do not have any contract with them?

A. No written contract; no.

Q. From whom do you think you can obtain the other twenty boats? You say that you expect to have thirty boats.

A. Well, my answer to that question must be the same as I previously made, Mr. Foster, that we have had negotiations with several other companies; but I do not care to disclose here as to just who they are.

Q. But none of these negotiations have resulted so far in anything definite, that has been reduced to writing, on any
629 particular basis; that is correct, is it not?

A. Well, no, sir; that is not quit correct. In other words, the arrangements have been quite definite, in one case, but they have not been reduced to writing.

Q. They have not been reduced to writing in any case, have they?

A. That is true.

Mr. FOSTER. That is all.

Exam. MCGRATH. Are there any further questions of the witness?

Mr. EISEN. Nothing.

Exam. MCGRATH. If not, you are excused.

(Witness excused.)

Exam. MCGRATH. Next witness.

Mr. EISEN. Recall Mr. McMillan.

Exam. MCGRATH. Have you testified previously in this proceeding?

Mr. MCMILLAN. No, sir.

Exam. MCGRATH. Be sworn, please.

JAMES MCMILLAN was sworn and testified as follows:

Direct examination by Mr. EISEN:

Q. State your name.

A. James McMillan.

Q. Your address.

A. 210 Wayne Street, Detroit, Michigan.

630 Q. With what company are you connected?

A. Detroit & Cleveland Navigation Company.

Q. In what capacity.

A. General manager.

Q. What are your general activities and duties as general manager of the Detroit & Cleveland Navigation Company, Mr. McMillan?

A. I have general supervision over all of the operations and office activities of the company, which includes the Accounting Department.

Q. Has there been prepared under your supervision and direction for the purpose of introduction into the record in this proceeding, a balance sheet of your company for the period ending December 31, 1942?

A. There has been prepared, under my direct instructions and supervision, a balance sheet of the company for the year ending December 31, 1942, yes, sir. This balance sheet was prepared for submission to the Interstate Commerce Commission as a part of our annual report, and was not specifically prepared for this particular hearing. The original of this balance sheet is on file in the Accounting Offices of the Interstate Commerce Commission.

Mr. EISEN. May we have this document marked as Protestants' Exhibit No. 38 for identification, please.

(Protestants' Exhibit 38, Witness McMillan, marked for identification.)

631 By Mr. EISEN:

Q. Mr. McMillan, how long has your company been engaged in the transportation of automobiles on the Great Lakes?

A. The Detroit & Cleveland Navigation Company has been engaged in the transportation of freight and passengers on the Great Lakes since 1868. We have engaged in the transportation of automobiles as a specialized division of our freight carriage, since 1933.

Q. What is the present intention of your company with respect to automobile transportation after the conclusion of the present war?

A. The company fully intends to engage again in the transportation of automobiles after the war, to the same extent as, or greater than, we were engaged therein prior to the outbreak of the present conflict.

Q. And what are your present intentions, or the present intentions of your company, relative to supplying available transportation facilities after the war?

Mr. FOSTER. Now, just a moment. I do not believe that this witness, unless he has something to do with the general policy of the company, can testify as to what the intentions or what the plans of this company are after the war. I think he should be asked some preliminary questions, to develop a basis for his answer to that question.

Exam. MCGRATH. Yes.

The WITNESS. I have been instructed, Mr. Examiner, to
632 speak for the company at this hearing, and say that these policies which I have outlined are the policies of the Detroit & Cleveland Navigation Company. My authority is fully competent.

Exam. MCGRATH. Now, you read the last question, please, Mr. Reporter.

(Question read.

A. The company has in the past always supplied the trade with sufficient equipment to take care of the existing needs, and it fully intends to do likewise after the conclusion of the war. At the present time we are operating the steamers Greater Detroit, Eastern States, Western States, City of Detroit III, and City of Cleveland III. These vessels are all combination package freight and passenger vessels, and are all capable of transporting automobiles. In the past we have carried automobiles on these vessels, and it is our current intention to restore the former facilities for the benefit of the shipping public.

By Mr. EISEN:

Q. Do you mean, the former automobile carrying facilities?

A. Yes, sir.

Q. Making available after the war facilities equivalent to your former facilities——

A. Yes.

Q. Prior to the outbreak of the war?

633 A. Yes, sir. In 1941 we operated six combination passenger and freight vessels, and in addition, four freight vessels exclusively, for the carriage of new automobiles.

Q. And it is the intention of your company to make such facilities, or equivalent facilities, available, as they may be required after the cessation of the present hostilities—is that correct?

A. Yes, sir.

Mr. EISEN. That is all.

EXAM. MCGRATH. Cross examine.

Cross-examination by Mr. FOSTER:

Q. Mr. McMillan, how long have you been connected with the Detroit & Cleveland Navigation Company?

A. Since the 4th of July 1934.

Q. Do you know that there is testimony in this record, undisputed, that after the purchase of the Fitch, your company refused to add any additional vessels, and told Mr. McCarthy that if he wanted them, he could add them himself, and he did?

Mr. EISEN. Just a moment.

A. Well, I don't know——

Mr. EISEN. Just a moment, please. Will you read that question, Mr. Reporter.

(Question read.)

Mr. EISEN. What year?

Mr. FOSTER. How?

634 Mr. EISEN. What year are you referring to?

Mr. FOSTER. When he made his additions, first in 1934, and then in 1935.

Mr. EISEN. I object to the question as being without the scope of the direct testimony.

Mr. FOSTER. Mr. Examiner——

Mr. EISEN. Just a moment. The witness has testified as to the facilities that will be made available after the war, and not as to the facilities that were made available in 1934.

Mr. FOSTER. The witness testified that they expected to supply them in the future just as they always had done in the past.

The WITNESS. We expect to.

Mr. FOSTER. And I submit, that certainly opens the thing wide.

Mr. EISEN. He did not say that at all.

Mr. FOSTER. Oh, yes; he did, and the record will bear me out.

Mr. EISEN. No; he did not. He said, "the equivalent."

The WITNESS. I think I can answer the question, if I may, your Honor.

Exam. MCGRATH. All right; go ahead and answer it.

The WITNESS. I think I can answer it by saying that it is our intention to supply the service, service that will adequately meet the demand, whatever it may be, in so far as we
635 are capable of doing so.

By Mr. FOSTER:

Q. But you know as a matter of fact, do you not, if you have been there since 1934, that from 1934 on, the facilities had to be supplied by the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company because of the attitude of your company, which said that it would not invest any further money?

Mr. EISEN. I object to the question.

By Mr. FOSTER:

Q. You know that, do you not?

Mr. EISEN. Just a moment.

By Exam. MCGRATH:

Q. Are you familiar with that situation, Mr. Witness?

A. Yes; certainly.

Exam. MCGRATH. All right.

A. I differ with you there, Mr. Foster. Mr. McCarthy did not supply the service. Mr. McCarthy happened to own vessels which we chartered and operated.

By Mr. FOSTER:

Q. But he did supply the boats, did he not?

A. Yes, that is correct, but had Mr. McCarthy not supplied them, there were many other places where they could have been readily obtained.

Q. Are you familiar with the earlier testimony here, that that matter came up in connection with an agreement that Mr. McCarthy had to supply additional boats?

A. I think that was true; yes.

636 Q. Yes. Now, who authorized you to testify here that it is the policy of the Detroit & Cleveland Navigation Company that it will invest as much money as may be necessary in adding to its facilities as they may be needed in the future?

A. The president of the company, who in turn derives his authority from the board of directors.

Q. You know as a matter of fact, do you not, Mr. McMillan, that the board of directors has not passed any resolution with respect to what it is going to do in the way of adding transportation facilities in the future?

A. No.

Q. You do not know that?

A. No, sir; I do not. I am not a director of the company.

Q. Are you secretary of the company?

A. No.

Q. Assistant secretary?

A. No.

Q. What is your capacity, again?

A. I am general manager of the company, as I testified previously.

Q. Yes. So that all you know about that situation, then, is what somebody else has told you; is that right?

A. Yes, sir; I would say that that is correct—well now, just a moment. I think you ought to limit that question. Just what do you mean; all I know about what?

637 Q. All you know about the policy of the company, as far as the future is concerned, is what somebody else has told you; that is correct, is it not? You have no personal knowledge of that yourself, have you?

A. No, sir; that is not true. I have a personal knowledge about it because I am kept in touch with any discussions that have to do with settling the policy.

Q. But you say that the person who told you that that was to be the policy of your company, was the president of the company.

A. Yes.

Q. And you say that the president derives his authority from the board of directors.

A. Yes.

Q. Yes. So that——

A. I said, he is responsible to the board of directors.

Q. But so far as the policy of the company is concerned, the only thing that you know about that is what somebody else has told you. Now that is correct, is it not, according to your own testimony?

A. I enter into any discussions which have to do with setting the policy. I enter into discussions as to policy, as far as the policy of the company is concerned.

Q. Well now, that does not answer my question, Mr. McMillan. I wish you would answer my question, please.

638 A. That question, the way you have asked it, cannot be fairly answered by a yes-or-no answer, and I do not propose to attempt to answer it that way, Mr. Foster.

Mr. Foster. Well then, if the Examiner please, in view of the testimony of the witness, I think it is quite obvious that he is merely testifying to hearsay testimony, and I therefore move that his entire testimony be stricken from the record.

Mr. Eisen: Just a moment.

Mr. FOSTER. If they are going to put anything into this record with respect to the future policy of this witness' company, then I think we ought to have the man in here who knows something about it, and can testify to it directly, and let us cross-examine him.

Mr. EISEN. Now, just a moment.

Mr. FOSTER. I move that all of the testimony be stricken out, if your Honor please.

Mr. EISEN. Oh, no.

Exam. MCGRATH. The testimony is received, subject to that objection.

Mr. FOSTER. It certainly is.

Mr. EISEN. Just a moment. What was the ruling of the Examiner, please?

Exam. MCGRATH. I say, the testimony is received, subject to that objection.

Mr. EISEN. All right.

Exam. MCGRATH. Is there further cross-examination?

639 Mr. FOSTER. Yes.

By Mr. FOSTER;

Q. You have never attended any meeting of the board of directors when the policy of your company for the future was discussed, have you?

A. Yes.

Q. You have attended such board meetings?

A. Yes.

Q. Were any resolutions passed at such board meetings determining what the policy of your company was going to be after the war?

A. Not directly with respect to the carriage of new automobiles; no, sir.

Q. You never heard the carriage of new automobiles after the war even discussed in one of your board of directors meetings, did you?

A. No.

Mr. FOSTER. That is all.

Exam. MCGRATH. Are there any further questions of the witness?

Mr. EISEN. I have none.

Exa. MCGRATH. If not, you are excused.

(Witness excused.)

Mr. EISEN. I do not know whether the record shows my offer of Protestants' Exhibit No. 38 for identification, in evidence, or not.

640 Exam. MCGRATH. It is received.

(Protestants' Exhibit 38, Witness McMillan, received in evidence.)

Exam. McGRATH. Next witness.

Mr. EISEN. That is all.

Exam. McGRATH. Does that complete the presentation on behalf of protestants?

Mr. ELDRED. I would just like to ask, if the Examiner please, that the Commission take judicial notice of the service that is offered by the railroads between the points involved in these applications, as indicated by the tariffs on file with the Commission. Do you have any objection to that, Mr. Foster?

Mr. FOSTER. None whatever; no, sir. I think the Commission will do it, anyway.

Mr. ELDRED. Thank you.

Exam. McGRATH. Is there any further testimony to be offered by the protestants? (No response.) No response. Is there any further testimony in the nature of rebuttal?

Mr. FOSTER. I believe not, Mr. Examiner, but will you give us just a half a moment, please.

Exam. McGRATH. Certainly.

Mr. FOSTER. I would like to ask Mr. McMillan just one or two further questions, if I may, your Honor.

Exam. McGRATH. Yes.

641 Mr. FOSTER. Is he still here?

Mr. EISEN. No.

Exam. McGRATH. Has Mr. McMillan gone?

Mr. EISEN. Yes.

Exam. McGRATH. The witness has left the hearing room.

Mr. FOSTER. Well, never mind, then, we will just pass it.

Exam. McGRATH. Is there anything further, then?

Mr. FOSTER. We have no rebuttal.

Exam. McGRATH. That concludes the testimony, then. Do the parties desire to file briefs in this case?

Mr. FOSTER. Yes, if the Examiner please, I would desire to file a brief. I would appreciate it very much if you could give us more than the usual thirty days.

Exam. McGRATH. For what reason?

Mr. FOSTER. I am right in the middle of a number of labor negotiations, and I do not know how long they are going to take.

Exam. McGRATH. That is something which is actually in progress at the present time, is it?

Mr. FOSTER. Yes, sir; it is, and then we also have hearings set ahead. I would like to have at least forty-five days, if that can possibly be done. There is also the matter of the time when we will receive the transcript, Mr. Examiner. Because of the conditions

under which I understand the reporters have to work, most of the transcripts are being delayed in delivery, and necessarily so.

642 Exam. McGRATH. We will fix the brief date as July 21st, 1943. Now, gentlemen, generally there is no proposed report in a proceeding that is had on further hearing unless one is specifically requested. What is your pleasure with regard to that in this matter?

Mr. FOSTER. Oh, we would like very much to have a proposed report, as far as we are concerned, your Honor.

Exam. McGRATH. Does anybody else join in that request?

Mr. EISEN. I am very sorry, Mr. Examiner, but I did not hear. What is this, now?

Mr. FOSTER. The matter of a proposed report. The Examiner inquired as to whether or not we wanted a proposed report.

Mr. EISEN. It is immaterial to me, as far as I am concerned. Either way.

Mr. FOSTER. It is always very difficult to write a brief, and argue the matter later on, if you do not have a proposed report.

Exam. McGRATH. Very well, then; it is understood that there will be a proposed report in this proceeding.

Mr. FOSTER. Thank you.

Exam. McGRATH. Is there anything further, gentlemen? (No response.) If there is nothing further, let the record show that the hearing is closed.

(At 3:10 p. m., June 4, 1943, hearing closed.)

643 *Exhibit 33*

WAR SHIPPING ADMINISTRATION
1319 Terminal Tower
CLEVELAND, OHIO

MAY 29, 1943.

T. J. McCARTHY STEAMSHIP COMPANY,
419 West Woodbridge Street, Detroit, Michigan.

GENTLEMEN: For your information during 1943 the War Shipping Administration requisitioned the Steamer "Wm. F. Fitch" and all the fleet of the Great Lakes Transit Corporation for title and removed them to salt water. They also requisitioned the Steamer "Greater Buffalo" for title and she has been converted into an aircraft carrier for the Navy and is operating upon the Great Lakes.

The War Shipping Administration also purchased from the Overlakes Freight Corporation the following ships which are now being operated as bulk carriers on the Great Lakes: S. S. "Penob-

scot," S. S. "Coralia," S. S. "Sonoma," S. S. "Crescent City," and S. S. "Fred L. Hewitt."

Very truly yours,

(Sgd.) ROBERT D. SMITH,
Robert D. Smith,
Regional Manager.

644 *Exhibit 34*

INTERSTATE COMMERCE COMMISSION

No. 28162

NICHOLSON UNIVERSAL STEAMSHIP COMPANY OWNERSHIP (INTEREST OF THE NEW YORK CENTRAL RAILROAD COMPANY IN NICHOLSON UNIVERSAL STEAMSHIP COMPANY)

Submitted April 20, 1943. Decided May 10, 1943

On further hearing, prior report, 248 I. C. C. 43, found that the New York Central Railroad Company does not now have control of, or interest in, the Nicholson Universal Steamship Company within the meaning of section 5 (14) and section 1 (3) of the Interstate Commerce Act. Proceeding discontinued.

Appearances noted in prior report.

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

In the prior report in this proceeding, 248 I. C. C. 43, decided October 6, 1941, the Commission found competition to exist between the New York Central Railroad Company and the Nicholson Universal Steamship Company and that the New York Central has had and now has control of and otherwise has had and still has an interest in Nicholson Universal, within the meaning of Section 5 (14) and section 1 (3) of the Interstate Commerce Act; that no application has been filed by the New York Central under section 5 (16) seeking authority to continue to have such control and such interest; and that such control and such interest constituted and constitutes a violation of section 5 (14) of the act. We provided that unless voluntary steps were taken by respondents to effect discontinuance of the unlawful relationship within 90 days, further action would be considered. The effective date of the findings was postponed from time to time, and on May 4, 1942, we reopened the proceeding for further hearing to determine whether the finding in the report "that there is actual competition for traffic between the New York Central and Nichol-

son Universal" should be modified. On January 15, 1943, we broadened the scope of the further hearing to include the question as to whether any modification should be made in the finding "that the interest of the New York Central in Nicholson is such an interest as is contemplated by section 5 (19) of the Interstate Commerce Act and section 5 (14) of the Transportation Act of 1940."

In addition to the New York Central and Nicholson, respondents include Securities Corporation of the New York Central Railroad Company, Linden Securities Corporation, United States Freight Company, Overlakes Freight Corporation, and two
645 of Nicholson's subsidiaries, Spokane Steamship Company, and Universal Terminal Company (Cleveland). At the time of the prior report, Nicholson was operating boats on the Great Lakes in competition with the New York Central, particularly in the transportation of automobiles. The chain of interest was as follows: New York Central owned all the capital stock of Securities and had a claim against it for over $14,000,000 advances for purchase of U. S. Freight stock. Securities in turn had a similar claim against Linden (assigned in trust to B. H. Meyer). Linden was record owner of 49 percent of the stock of U. S. Freight (likewise deposited, with right to vote, with the above trustee). U. S. Freight owned over $3,000,000 in debenture notes of Overlakes, with contractural restrictions, including the right to name certain of the directors of Overlakes. Overlakes owned and still owns the capital stock of Nicholson. U. S. Freight held a $1,000,000 mortgage on the property of Nicholson, and the stock of Nicholson as collateral. In addition to the vessels it owned and operated, Nicholson owned the stock of the Universal Terminal (Cleveland), a dock at Detroit, and had a lease on a dock at Milwaukee, guaranteed by U. S. Freight.

On September 23, 1942, Nicholson sold five of its vessels to the United States Government (Maritime Commission) for $1,000,000 cash. With the cessation of the automobile traffic due to the war, its remaining vessels are engaged in the hauling of bulk traffic with which there is little, if any, competition with the New York Central. The competition between the two companies is now very largely potential, depending largely on the resumption of the automobile traffic.

On October 21, 1942, pursuant to agreement entered into between U. S. Freight and Overlakes, Nicholson and their subsidiaries on August 31, 1942, Nicholson paid U. S. Freight $1,020,000 in cash, deeded it the dock property at Detroit, and transferred to it all its shares in Universal Terminal in consideration of which U. S. Freight cancelled the mortgage and released the stock held as collateral, cancelled the debentures and gave up the re-

strictions, including the right to name directors, so that the directors of Overlakes, Nicholson, and their subsidiaries are now entirely different from those of U. S. Freight or its subsidiaries.

The only contractual relation between U. S. Freight and the Overlakes-Nicholson group of companies consists of the following: Overlakes owed Universal Terminal (now a subsidiary of U. S. Freight) $109,000, and, on September 29, 1942, executed a note for this amount to Universal Terminal, with a mortgage on two of the remaining vessels. Universal thereupon endorsed the note and mortgage to the Chase National Bank for $100,000 cash, less the customary discount. U. S. Freight has given Overlakes-Nicholson an option to lease the Cleveland terminal, as, if, and when automobile transportation is resumed. U. S. Freight is still the guarantor of the lease which Overlakes-Nicholson has on the docks at Milwaukee.

646 Thus by a cash payment (derived largely from the sale of certain of its vessels to the U. S Government), the transfer to U. S. Freight of its dock at Detroit and its stock in Universal Terminal at Cleveland, Overlakes-Nicholson has freed itself from any control or interest by the New York Central or affiliated corporations. Under the circumstances, it does not appear that the endorser, guarantor, or option relations remaining constitute "control or interest" within the meaning of the act.

Respondents also point out that the former officer of the New York Central, who was president of U. S. Freight at the time of the prior hearing died on July 31, 1941, and his successor is a man who has devoted his entire business life to the U. S. Freight organization. On November 25, 1941, the Securities Corporation was dissolved and its assets transferred to the New York Central. The officers and employees of the latter, pursuant to direction of its president, now treat U. S. Freight and its subsidiaries as if they were independent of the New York Central. However, the primary change disclosed on further hearing is the break in the chain of interest between U. S. Freight and its subsidiaries, on the one hand, and the Overlakes-Nicholson companies, on the other.

On further hearing, we find that the New York Central Railroad Company does not now have control of, or interest in, the Nicholson Universal Steamship Company within the meaning of section 15 (14) and section 1 (3) of the Interstate Commerce Act. The proceeding will be discontinued.

647 *Exhibit 35*

INTERSTATE COMMERCE COMMISSION

WASHINGTON,

APRIL 24, 1942.

Offices of Claude R. Porter, Commissioner.

Mr. JOSEPH B. EASTMAN, *Director,*
Office of Defense Transportation,
Washington, D. C.

DEAR MR. EASTMAN: In your letter to Acting Chairman Aitchison of April 22, you state that, because of the war emergency and the need to convert vessels to uses of primary importance, The Great Lakes Transit Corporation has been requested by your office to remove eight of its vessels from the regular trade and devote them, for the period of the war emergency, to the transportation of grain. You further state that while the carrier is willing to do this, the result will be that it will be forced to discontinue serving points and transporting property which it was engaged in serving and transporting on January 1, 1940. The carrier wishes some assurance that, by complying with your order, it will not forfeit any rights inuring to it under the "grandfather" clause of section 309 of part III of the Interstate Commerce Act and under its duly filed "grandfather" application.

Division 4 has been delegated authority by the Commission with respect to the adjudication of operating rights of common and contract carriers by water subject to part III of the act. I have discussed this matter with the other members of the division and I am authorized on behalf of the division to state that interruptions of service by water carriers subject to the act, which directly result from compliance with any request or requirement made by you pursuant to the provisions of Executive Order 8989, dated December 18, 1941, which established the Office of Defense Transportation, will be recognized by us as interruptions of service beyond the control of the carrier. Under the statute a carrier does not forfeit its so-called "grandfather" rights as a result of interruption of service made necessary by causes beyond its control.

You are authorized to make such publication of this letter as you may think desirable, and we will arrange to place it on our press table on April 28, 1942.

Yours very truly,

(S.) CLAUDE R. PORTER,
Claude R. Porter,
Commissioner.

Exhibit 36

Witness: Lyons

Great Lakes Transit Corporation, statistical table of operations by above carrier and Minnesota-Atlantic Transit Company

1 Year	2 GLT tonnage	3 MAT tonnage	4 Total tonnage	5 GLT frt. rev.	6 MAT frt. rev.	7 Total frt. rev.	8 GLT W. L. opr. expenses	9 MAT W. L. opr. expenses	10 Total W. L. opr. expenses	11 GLT net income	12 MAT net income	13 Total net income
1916	2,577,883		2,577,883	4,469,327.95		4,469,327.95	2,741,705.30		2,741,705.30	570,465.59		570,465.59
1917	2,338,912		2,338,912	4,246,011.55		4,246,011.55	3,067,188.63		3,681,188.63	378,112.60		378,112.60
1918	1,493,112		1,493,112	3,636,564.97		3,636,564.97	2,942,836.11		2,942,836.11	924,624.70		924,624.70
1919	1,106,319		1,106,319	3,058,964.01		3,058,964.01	2,414,670.16		2,414,670.16	819,520.22		819,520.22
1920	1,751,740		1,751,740	4,543,466.51		4,543,466.51	3,884,399.60		3,884,399.60	815,079.55		815,079.55
1921	1,091,955		1,091,955	3,953,918.66		3,953,918.66	3,134,810.99		3,134,810.99	917,460.26		917,460.26
1922	1,466,962		1,466,962	4,731,786.72		4,731,786.72	3,760,203.89		3,760,203.89	1,019,622.27		1,019,622.27
1923	1,919,506	5,780	1,925,826	5,699,971.40	36,289	5,706,260.40	4,658,783.65	47,451	4,706,234.65	596,850.41	*16,605	580,245.41
1924	1,577,663	189,355	1,767,018	4,430,534.01	601,853	5,022,387.01	4,149,525.54	747,645	4,897,170.54	302,437.07	*220,586	81,850.07
1925	1,382,360	277,052	1,659,412	4,027,718.42	910,450	4,938,168.42	3,717,589.07	1,144,475	4,862,064.07	495,867.41	*341,751	153,816.41
1926	1,761,852	335,752	2,097,604	4,509,960.80	835,345	5,345,305.80	4,100,608.10	972,496	5,073,104.10	405,695.08	*215,908	189,697.08
1927	1,626,383	334,319	1,954,702	4,674,386.87	870,733	5,545,119.87	4,309,950.94	1,099,757	5,409,707.94	385,531.95	*147,360	238,171.95
1928	1,691,386	293,363	1,984,749	4,837,536.62	1,021,180	5,848,716.62	4,587,702.48	1,205,540	5,793,242.48	242,043.45	*241,980	63.45
1929	1,588,611	315,854	1,904,465	4,041,279.57	1,344,736	6,186,015.57	4,457,244.26	1,483,339	5,940,583.26	97,622.77	*98,964	*1,341.23
1930	1,248,900	274,523	1,523,423	3,933,800.14	1,210,356	5,144,156.14	3,800,433.88	1,109,277	4,909,710.88	29,635.11	*11,087	18,548.11
1931	980,793	271,055	1,251,848	3,463,525.88	1,200,560	4,664,105.88	3,002,444.56	1,018,852	4,021,296.56	220,853.75	118,238	339,101.75
1932	896,107	202,061	1,098,168	2,995,214.61	917,141	3,912,355.61	2,572,442.54	877,725	3,450,167.54	123,951.93	*16,878	107,073.93
1933	942,038	259,368	1,201,306	3,151,184.43	1,175,454	4,326,638.43	2,719,107.71	1,004,580	3,723,687.71	209,676.08	165,048	*144,628.08
1934	784,509	211,956	996,465	2,514,970.92	955,478	3,470,448.92	2,672,628.40	1,028,469	3,901,097.40	*506,055.38	*71,276	*577,331.38
1935	975,913	334,489	1,310,402	3,145,049.72	1,566,190	4,711,239.72	3,124,187.38	1,449,866	4,574,053.38	*165,630.03	*508,817.30	*78,795.03
1936	1,036,445	373,244	1,409,689	3,181,676.23	1,641,649	4,823,325.23	3,587,965.95	1,579,441	5,167,406.95	*508,817.30	*8,617	*517,434.30
1937	911,642	346,660	1,258,302	2,661,402.19	1,609,827	4,271,229.19	3,037,668.57	1,661,355	4,699,023.57	*428,607.21	*100,004	*528,611.21
1938	844,442	313,286	1,157,728	2,752,087.16	1,369,415	4,121,502.16	2,891,517.42	1,400,973	4,292,490.42	*317,045.71	*41,651	*258,696.71
1939	965,241	332,983	1,298,224	3,277,374.25	1,513,493	4,790,867.25	3,294,200.78	1,563,836	4,858,036.78	*148,601.71	16,778	*131,823.71
1940	927,242	295,141	1,222,383	3,132,245.91	1,277,252	4,409,497.91	3,111,293.17	1,450,230	4,561,523.17	*70,835.84	*79,537	*150,372.84
1941	960,251	300,592	1,260,843	2,880,782.00	1,236,519	4,117,301.00	3,418,908.00	1,753,530	5,172,438.00	*264,379.00	*45,909	*310,288.00

*Red figures.

NOTE.—Revenue figures include freight revenue only as carried in W. R. I., Schedule 310, Annual Report Form K. Waterline operating expenses reflect only freight expenses as carried in Schedule 311, Annual Report Form K. Net income figures are those reported to I. C. C. as Item 46, page 301, and do not reflect mere freight operating income.

Exhibit No. 37

Witness: Lyons.

Great Lakes Transit Corporation, table of gross revenue, expenses, and net results of operations in total and divided between named lakes served, for years stated below

	1936	1937	1938	1939	1940	1941
Freight revenue—Lake Michigan	$1,622,699.43	$1,049,383.29	$1,305,837.72	$1,465,350.45	$1,311,406.46	$685,456.01
Freight revenue—Lake Superior	1,604,417.63	1,581,599.27	1,446,152.43	1,828,591.95	1,767,412.65	2,498,430.26
Freight revenue—Lake Erie	None	150,389.17	82,840.86	18,621.78	80,572.14	63,104.60
Passenger revenue—Lake Superior	461,597.36	None	None	None	None	None
Total revenue	3,688,714.42	2,781,371.73	2,834,831.01	3,312,570.18	3,168,451.25	3,247,050.87
Freight expenses—Lake Michigan	1,998,031.21	1,303,351.44	1,566,608.63	1,781,082.35	1,430,537.58	937,396.11
Freight expenses—Lake Superior	1,685,299.88	1,652,559.26	1,309,523.52	1,595,488.33	1,654,671.13	2,449,450.01
Freight expenses—Lake Erie	None	175,297.49	110,193.29	15,542.78	97,602.96	104,583.77
Passenger expenses—Lake Superior	488,102.27	None	None	None	None	None
Passenger expenses—Idle Equipment	26,098.36	78,770.73	65,551.28	69,058.43	36,385.42	None
Total expenses	4,197,531.72	3,209,978.94	3,051,876.72	3,461,171.89	3,239,287.09	3,511,429.89
Net result—Lake Michigan—Freight	*375,331.78*	*259,968.15*	*260,770.91*	*315,785.90*	*139,071.12*	*271,940.10*
Net result—Lake Superior—Freight	*80,882.25*	*70,960.01*	*136,628.91*	*233,103.62*	*112,741.52*	*48,980.25*
Net result—Lake Erie—Freight	None	*24,908.32*	*27,352.43*	*3,079.00*	*8,120.82*	*41,419.17*
Net result—Lake Superior—Passenger	*96,504.91*	None	None	None	None	None
Net result—Idle Equipment—Passenger	*26,098.36*	*78,770.73*	*65,551.28*	*69,058.43*	*36,385.42*	None
Net result (line 7, page 300, I. C. C. annual report)	*508,817.30*	*428,607.91*	*217,045.71*	*148,601.71*	*70,838.84*	*264,579.08*

650 *Exhibit 38*

DETROIT AND CLEVELAND NAVIGATION COMPANY, ANNUAL D. & C. REPORT FOR YEAR ENDED DECEMBER 31, 1942

DETROIT AND CLEVELAND NAVIGATION COMPANY, DETROIT, MICHIGAN, INCORPORATED UNDER THE LAWS OF MICHIGAN

Directors

Manferd Burleigh, President, Ohio Greyhound Lines, Detroit; Charles T. Bush, President, C. A. Strelinger Co., Vice President, Industrial National Bank; Oliver S. Dustin, President and General Manager, Ashley & Dustin Steamer Line; Ernest H. Fletcher, Certified Public Accountant, Fletcher, Van Tifflin, Ross & Lyons; George T. Hendrie, Secretary-Treasurer, Grosse Pointe Lands Company, Detroit; Walter S. McLucas, Chairman, Board of Directors, National Bank of Detroit; James T. McMillan, President; Edward D. Stair, President, F. P. Company; James Turner, Attorney, Angell, Turner, Dyer & Meek.

Officers

James T. McMillan, President; James Turner, Vice President; Oliver S. Dustin, Vice President; James R. Coulter, Secretary-Treasurer; Bernard M. Gordon, Assistant to the President; James McMillan, General Manager; Detroit Trust Company, Transfer Agent; National Bank of Detroit, Registrar.

651 *To the Stockholders of the Detroit and Cleveland Navigation Company:*

We are pleased to submit to you herewith the annual report of the company for the year 1942.

Price, Waterhouse & Co.'s certificate appended to the financial statements attached hereto explains the present status of the two vessels, namely, the steamer "Greater Buffalo" requisitioned August 7, 1942, and the freighter "William F. Fitch" requisitioned July 8, 1942.

The accountants also refer to the revised depreciation rate as applied in the year 1942 and to the amount of earned surplus resulting from the reduction of $2,000,000 in the accumulated depreciation reserve.

The changes in the depreciation rate, the resulting adjustment of the depreciation reserve and the restatement of the earned surplus account have been set up in the financial statements and have been approved by the Interstate Commerce Commission.

The management is directing its business policy to serve adequately with its present facilities the requirements of passenger

and freight transportation between the arsenal cities of Detroit, Cleveland and Buffalo.

We wish to thank the stockholders for their cooperation, also the directors, officers and employees for their loyal efforts. United cooperation of all will best serve the interests of stockholders.

JAMES T. MCMILLAN,
President.

652 *Detroit and Cleveland Navigation Company, a Michigan Corporation, and Detroit and Cleveland Steamship Company*

CONSOLIDATED BALANCE SHEET

Current assets:			
Cash in banks and on hand			$889,730.02
U. S. Government and other marketable securities, at or below cost (quoted market $99,272)			97,900.00
Accounts receivable:			
Freight and passenger accounts		$32,033.94	
Insurance claims, etc		57,667.50	
Distribution from receiver of closed bank, collected January 1943		35,417.41	
Miscellaneous		17,996.60	
		143,115.45	
Less—Reserve for doubtful accounts		10,000.00	133,115.45
Inventories of materials and supplies at cost			91,467.24
			1,212,212.71
Other assets:			
U. S. Government bonds deposited under workmen's compensation laws		49,000.00	
Mortgage note receivable		12,285.30	
Claims against closed banks	$10,735.57		
Less—Reserve	10,735.57		61,285.30
Fixed assets, at cost:			
Land (note 2)		1,427,442.92	
Buildings and wharves (note 2)	818,903.92		
Vessels (note 1)	10,964,346.39		
Other equipment	398,394.03		
Together	12,181,644.34		
Less—Reserve for depreciation	8,497,624.51	3,684,019.83	
Improvements to leasehold properties	251,353.71		
Less—Reserve for amortization	175,070.76	76,282.95	
Spare parts and equipment for vessels		113,831.33	5,301,577.03
Deferred charges:			
Prepaid taxes, insurance, etc			64,431.39
			6,639,506.43

DECEMBER 31, 1942

Current liabilities:		
Accounts payable		40,460.22
Accrued expenses		20,955.66
Unadjusted freight, passenger and other claims		10,535.03
		71,950.91
Reserve for workmen's injury claims		25,000.00
Capital stock:		
Authorized—1,000,000 shares of $5 par value		
Issued or reserved for exchange for old shares—499,500 shares		2,497,500.00
Capital surplus—from retirement of capital stock purchased at less than par and reduction in 1941 of the par value of capital stock from $10 to $5 per share (no change in 1942)		3,249,733.27
Earned surplus:		
At December 31, 1941 (deficit)	($936,110.74)	
Amount transferred from reserve for depreciation of vessels as of January 1, 1942 as approved by the Interstate Commerce Commission	2,000,000.00	
At January 1, 1942, as adjusted	1,063,889.26	
Loss for the year 1942, per statement attached	(268,567.01)	
At December 31, 1942, surplus		795,322.25
		6,639,506.43

Notes

(1) Cost of vessels includes $3,505,637.76 for two vessels requisitioned during the year 1942 by the War Shipping Administration; the amounts to be received therefor have not yet been determined.

(2) Land carried at $455,316.25 and buildings (less depreciation) carried at $93,573.78 are not used in the companies' transportation business.

(3) Fit-out expenses for the 1943 season, estimated by the management at approximately $40,000 have not been provided for in the above accounts.

Detroit and Cleveland Navigation Company and Detroit and Cleveland Steamship Company

Consolidated Statement of Profit and Loss for the Year Ending December 31, 1942

Revenues:		
Passenger		$1,930,899.40
Freight		702,457.88
Rentals, storage, etc		55,013.95
Total revenues		2,688,371.23
Operating expenses		2,743,359.56
Operating loss before depreciation and amortization		54,988.33
Other income:		
Interest dividend from closed bank	$52,263.43	
Interest on bonds, etc	7,619.02	
Miscellaneous	3,952.00	63,534.45
Balance, gain before provision for depreciation and amortization		8,546.12
Provision for depreciation and amortization		277,113.13
Loss for the year, to surplus account		268,567.01

653 DETROIT, MICHIGAN, *March 20, 1943.*

To the Board of Directors and the Stockholders of Detroit and Cleveland Navigation Company:

We have examined the consolidated balance sheet of Detroit and Cleveland Navigation Company and its wholly owned subsidiary, Detroit and Cleveland Steamship Company, as of December 31, 1942, and the related statement of profit and loss for the year then ended. Our examination was made in accordance with generally accepted auditing standards applicable in the circumstances and included such tests of the accounting records and other supporting evidence and such other procedures as we considered necessary.

Included in fixed assets in the accompanying balance sheet is $3,505,637.76 representing the cost of two vessels requisitioned during the year 1942 by the War Shipping Administration. The amounts to be received from the War Shipping Administration for the requisitioned vessels under Section 902 of the Merchant Marine Act of 1936, as amended, have not been determined pending clarification of the law.

By order of the Interstate Commerce Commission dated July 22, 1942, the company was directed to reduce the depreciation rates applicable to certain classes of assets, including vessels, and to apply such reduced rates to the composite cost of the several asset classifications instead of to the cost of individual assets. This revision of depreciation accounting has, with the approval of the Commission, been adopted by the company retroactive to January 1, 1942. Depreciation provided in 1942 under the new method was $20,945 less than would have been provided under the method applied in 1941. Under date of February 27, 1943, the Commission canceled its previous approval of an entry on the company's books writing off the December 31, 1941, operating deficit against capital surplus and, in harmony with the directed reduction of depreciation rates, authorized a reduction of $2,000,000 in the accumulated depreciation reserves with concurrent addition of such amount to earned surplus.

In our opinion, the accompanying balance sheet and related statement of profit and loss present fairly the position of the combined companies at December 31, 1942, and the results of their operations for the year, insofar as they are now determinable under the conditions mentioned in the second preceding paragraph, in conformity with generally accepted accounting principles applied on a basis consistent, except as indicated in the last preceding paragraph, with that of the preceding year.

PRICE, WATERHOUSE & CO.

654 Before the Interstate Commerce Commission

Docket No. W–592

IN THE MATTER OF APPLICATION OF T. J. MCCARTHY STEAMSHIP COMPANY FOR A CERTIFICATE TO OPERATE AS A COMMON CARRIER IN THE TRANSPORTATION OF PROPERTY BETWEEN PORTS ON THE GREAT LAKES

Docket No. W–729

APPLICATION OF AUTOMOTIVE TRADES STEAMSHIP COMPANY TO OPERATE AS A COMMON CARRIER BY WATER.

HEARING ROOM "B,"
INTERSTATE COMMERCE COMM. BLDG.,
Washington, D. C., Wednesday, January 12, 1944.

The above-entitled matter came on for argument before the Commission at 10:00 o'clock a. m.

Present: Commissioners PATTERSON (Chairman), AITCHISON, PORTER, LEE, MAHAFFIE, MILLER, SPLAWN, ALLDREDGE, and JOHNSON.

Appearances: Sparkman D. Foster, Penobscot Building, Detroit, Mich., appearing for applicants. S. S. Eisen, 140 Cedar Street, New York City, New York, appearing for Nicholson Universal Steamship Company. Karl D. Loos, Munsey Building, Washington, D. C., appearing for Detroit & Cleveland
655 Navigation Company. Frank W. Sullivan, 231 South LaSalle Street, Chicago, Illinois, appearing for Great Lakes Transit Corporation.

657 PROCEEDINGS

Chairman PATTERSON: The Commission will hear argument in No. W–592, the T. J. McCarthy Steamship Company, Common Carrier Application, including No. W–729, Automotive Trades Steamship Company Common Carrier Application. Mr. Foster.

Argument of Mr. S. D. Foster on behalf of applicants

Mr. FOSTER: May it please the Commission, I think it will be well to review somewhat briefly for the Commission the history of these two companies.

The T. J. McCarthy Steamship Company is a Michigan corporation, organized in 1935. It is the owner of one specially equipped automobile boat.

The Automotive Trade Steamship Company was organized in 1936 and is the owner of two vessels, formerly automobile boats.

The T. J. McCarthy Steamship Company had a solicitation agreement with the Detroit and Cleveland Navigation Company, which did not expire until 1942. That company also had charters on one of the vessels of the Automotive Trade Steamship Company, which it had the right to renew from year to year. The contract for solicitation of automobiles had been entered into back in 1937 and was in effect during the time that legislation was pending on Part Three of the Act and when it was enacted.

658 The company had operated one of the vessels in the bulk trade up until the end of 1939, and operated somewhat in the bulk trade during the latter part of 1941. It originally filed its applications in May of 1941, seeking rights under the "grandfather" section of the statute. The first proposed report stated that it didn't feel that there were any "grandfather" rights, but did grant certificates or proposed that certificates be granted on convenience and necessity. Protests were filed to that.

Now, the testimony which was offered in February of 1942 was at a time when all arrangements between the T. J. McCarthy Steamship Company and the Automotive Trades Steamship Company and the Detroit and Cleveland Navigation Company had been terminated.

An amendment to the original application was filed in October 1941 seeking rights on public convenience and necessity.

The testimony was offered on both the "grandfather" feature and the public convenience and necessity feature.

The proposed report of Examiner Walsh recommended that rights be granted on public convenience and necessity, but that there were no "grandfather" rights, that the company had not been operating vessels on the crucial dates.

Protests were filed to that report by the Nicholson Universal Steamship Company and the Detroit and Cleveland Navigation Company. Division Four reversed the findings of the Examiner.

Subsequently, the companies filed a petition—

659 Commr. LEE. Did Division Four deny the rights, you say reversed the Examiner?

Mr. FOSTER. On 309 (c), on public convenience and necessity.

Commr. LEE. It denied them any operating rights?

Mr. FOSTER. Yes, either under the "grandfather" clause or public convenience and necessity clause.

The company then filed a petition for reconsideration and rehearing, that was granted, and the further hearing was held in Detroit last summer.

The proposed report of the examiner at the rehearing proposed that the applicants be granted rights for one full year after the termination of hostilities, and after the resumption of automobiles, that is, the production of automobiles for civilian use.

The applicants, as well as all of the protestants, filed exceptions to that report.

Commr. PORTER. He recommends a sort of limited convenience and necessity, is that it?

Mr. FOSTER. Yes, he recommends, his precise language——

Commr. PORTER. In my dissent to Division Four I agreed, but without any limitations.

Mr. FOSTER. That is right, you did. You voted dissent to the opinion of Division Four. You felt that a showing had been
660 made under 309 (c) that public convenience and necessity require operation by applicants.

Commr. PORTER. The Examiner granted limited convenience, is that right?

Mr. FOSTER. Yes. He says the Commission should find that until the close of one full navigation season after the termination of the war, and resumption of production and shipment by water of motor vehicles for civilian use, public convenience and necessity will require operation by applicants as common carriers by water of motor vehicles between Detroit and Lake Erie ports.

The early proposed report granted all of the Great Lakes. Your dissent granted not only Buffalo and Lake Erie ports, but the head of the lake ports, that is, Superior.

Not only at the original hearing, but at the adjourned hearing, it was quite obvious to everyone that there were no large number of automobiles being made, motor vehicles, those that there were being made, were being made for the armed services.

Now in 1942, when the application for "grandfather" rights was still pending; the companies' vessels had all been converted to the extent they might be used for the transportation of grain, on the insistence of the O. D. T. The Army approached the Automotive Trades Steamship Company and said that they had these vehicles, and that they should be moved to Buffalo. At that
661 time they said there was no available equipment to move those vehicles. The company, during 1942, actually transported between Detroit and Buffalo 950 vehicles for the Army.

From the time of the original hearing up until the time of the rehearing, the Great Lakes Transit Company had four of its 13 package freighters and one automobile boat requisitioned for ocean service. The Detroit and Cleveland Navigation Company had one of its combination passenger and freight boats requisitioned and later converted to an aircraft carrier, and one single automobile boat was also requisitioned for ocean service.

Since that time four have been returned for war shipping, have been returned to their original condition and are now in the grain trade.

We realized that when these boats were requisitioned, these companies were facing that through no fault of their own. In the case of the Nicholson Steamship Company, they voluntarily sold five of their automobile boats, sold these vessels to the War Shipping Administration, and they were converted for the transportation of iron ore at the request of the War Production Board.

But I don't think a great deal of that is material to the particular point which we have here. We had this company filing its
662 application for these rights in October prior to our getting into this war. It is true that the limited national emergency had been declared at that time, and at the time they filed the application it looked very much as though the production of automobiles would be somewhat normal in 1942. It was only after Pearl Harbor and the almost complete conversion of manufacturers to war materials that it was seen that these automobiles for civilian use would not be manufactured.

At the original hearing, Mr. Brennan of Chrysler, Mr. Hearn of Ford Motor Company, and the Assistant Traffic Manager of the Hudson Motor Car Company, who certainly have an intimate knowledge of transportation of automobiles on the Great Lakes, all testified from their knowledge of the transportation of automobiles and, and the manner and fact that these companies' automobile carriers had transported between 65 and 75 percent of all the automobiles transported by the Detroit and Cleveland Navigation Company, and that the future would necessitate the need for these vessels.

Chairman PATTERSON. Was Universal especially equipped to handle automobiles at the time of the hearing?

Mr. FOSTER. At the time of the first hearing they were. It was after that that they were converted, so they could carry grain.

In that connection, in the fall of 1942, the Great
663 Lakes director of the Office of Defense Transportation Mr. Allwood, told Mr. McCarthy he felt, in view of the quota of the War Production Board furnish, or that two of the larger vessels, the "T. J. McCarthy" and the "George H. Ingalls," should be further converted so that they could handle iron ore. That was done, although they did not transport any iron ore until after October 31, because each had been towing a barge; they had been in the grain trade under the directives, or with the consent of the O. D. T.

Chairman PATTERSON. Are there any vessels on the Great Lakes now so equipped to handle specially——

Mr. FOSTER. Not a single vessel is equipped to handle automobiles except the Detroit and Cleveland passenger and freight vessels, of space not taken up with tourist automobiles they can carry them on the freight deck in limited numbers.

Chairman PATTERSON. Are they equipped with extensions or things of that kind, the same as your boat?

Mr. FOSTER. No; entirely different boat. You drive them on the main deck on a level.

Chairman PATTERSON. They do that on or partly on the boat?

Mr. FOSTER. No, on an ore boat they have to build a tail rack and put it on the top deck. The D. & C. have specially equipped docks at Buffalo and Cleveland, they can handle only a small number of automobiles on the combination passenger and freight vessels.

664

The automobile-carrying vessels are such that they have all been devoted to the bulk trade, the "T. J. McCarthy" has been so converted, the Nicholson Universal boats that have not been sold also have been converted, and there are no automobile-carrying boats on the Great Lakes now.

Chairman PATTERSON. Does Nicholson compete with your company, with exactly the same type of equipment, in normal times?

Mr. FOSTER. Yes, they do. Nicholson Universal do exactly the same type of business, have the same type of equipment.

In converting these, Mr. McCarthy did save all the uprights, lumber, etc., so these vessels, in normal times, could be converted back to carriage of automobiles. The small amount of steel taken off them which the War Production Board wanted and took, would not seriously interfere with the reconversion back to automobile carriers of these three vessels.

On the question of public convenience and necessity, which is the part being bitterly fought by protestants, in fact Mr. Eisen suggested that probably the reason the motor car companies are sympathetic to Mr. McCarthy is because he is an old-timer and they want to help him out. It is true that Mr. McCarthy has been intimately connected with the transportation of automobiles by vessel on the Great Lakes since its inception, starting back with the Nicholson Transit Company in 1920.

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It doesn't seem to me, as busy as those men are, directors of traffic, those big motorcar companies, unless they felt this service was actually needed, or was going to be needed when the production of automobiles was resumed, would spend their time and effort testifying. Two of them came to Washington to the original hearing, which was adjourned. Subsequently, they attended the hearings at Detroit. At the rehearing the Pontiac Division of General Motors, Mr. Rogers, also testified that from his knowledge he felt this service would be needed. So I can't conceive of a stronger showing having been made on the question of public convenience and necessity than the testimony of these traffic managers, who certainly know their business, and who represent between 85 and

6 percent of the industry so far as shipping by water is con-
erned. They know that situation.

Commr. LEE. What was the matter with his "grandfather" rec-
rd, was that defective?

Mr. FOSTER. It was so held. I must say I have to agree with that
nder the decisions of the Commission. We thought at the time,
his relations were such with the Detroit and Cleveland Nav-
66 igation Company where he paid a part of the expenses, even
in 194:.

Chairman PATTERSON. At that time he was solicitor?

Mr. FOSTER. He was a solicitor, both of his companies had ar-
angements, charters by which he paid a part of the expenses.
he fact remains, at no time during the "grandfather" company
id these applicants ship these on their bills of lading, they were
ll shipped on Detroit and Cleveland bills of lading, D. and C.
ollected the freight.

Up to the close of the season, until this went into effect, the T. J.
IcCarthy Steamship Company was engaged in the transportation
f bulk commodities on the Great Lakes over these same routes,
30 and 1941, up until the end of 1941 the vessels were used exclu-
vely by the Detroit and Cleveland Navigation Company. Dur-
g 1940 neither of these companies issued bills of lading for any
ommodity in its own name, it was not until the end of the season,
1941, that the T. J. McCarthy Steamship Company actually
ent back into the transportation business at all. That was for a
rain cargo from the head of the Lakes to Buffalo. In fact, it
as from a Canadian port to Buffalo.

I do think, strictly speaking, Division Four is very likely right
saying the T. J. McCarthy Steamship Company had no "grand-
ther" rights under strict interpretation of the act. We did not
file exceptions even to the first proposed report in which it
was recommended that the Commission find the company
had no "grandfather" rights.

But we do feel that their application for convenience and neces-
y had been filed prior to the war and the hearing was held soon
er we went into the war, was held at the time of the year where
re were no vessels being operated on the Great Lakes. It was
d in February when automobiles were simply not moved, the
son does not open normally until around the 15th of April.
simply can't lose sight of the fact that the Act itself says
sent or future. We do know, at the time of the hearing, that
automobile companies had been advised by the War Produc-
n Board and other government agencies that the production of
senger automobiles for civilian use would be very sharply cur-
ed and a short time after that they were further curtailed,

and not even permitted to use up all the parts and materials which they had because they suddenly went into the manufacture of war materials.

The showing which we have made, we feel, justifies this Commission in granting these companies operating rights under public convenience and necessity.

There were two cases, motor carrier cases, where almost exactly this same point was brought up. There is no water carrier case. Division Five, in Jack Cooper, Jr. and Tom Cooper Extension of Operations, decided on May 30, 1942, No. MC–11185,
668 that was an application for extension of rights and it was quite obvious at that time that the production of automobiles which were being used for civilian use, was going to be sharply curtailed. The Commission said at the time of the hearing that 1942 models were expected to be reduced materially. We feel no automobiles were going to be transported for some time due to the war. Nevertheless, we are of the opinion that applicant, having made a case on which we usually grant authority in situations which are of record here, should be granted the authority sought for as presumably they are in no worse a condition than other automobile transporters. In other words, it would be placing undue hardship on applicants to compel them to present their evidence over again after conditions have, or should have changed.

At the further hearing, the Detroit and Cleveland Navigation Company testified, through their general manager, that they would offer the same service they had offered in the past. That they would get vessels. Just how they would get them or where they would get them they didn't know. The general manager said that all he knew about that was what he had been told by someone else. Mr. McGrath allowed that testimony, although the hearing was held at Detroit and the heads of the D. and C. Navigation Company there were available to come in and testify as to what their plans were. We think that testimony was purely hearsay and should be stricken from the records, disallowed.
669 Commr. AITCHISON. Was it in respect to what was going to be done in the future?

Mr. FOSTER. Yes.

Commr. AITCHISON. Can you think of any testimony with respect to what is going to be done in the future that isn't hearsay?

Mr. FOSTER. It could be opinion testimony, he testified what they were going to do. The man who knew was there in Detroit. It is a technical point. The point I wanted to bring out was the testimony was undisputed the solicitation of the McCarthy Company added no business to the Detroit and Cleveland Company,

the President of the Company told Mr. McCarthy his company would not invest any more money in automobile boats. A subsidiary company did buy the Fitch, which was converted into an automobile boat. Thereafter business was expanded, and Mr. McCarthy went out and bought these vessels and turned around and chartered them to the Detroit and Cleveland Navigation Company, after convincing them there would be a need for these vessels.

All that has been terminated, for them to come in, after at one time refusing to add any facilities, having these companies go out, aiding them, to say we don't want this company to have rights, if we need them we will aid the boats, whereas this company had aided the boats, paid for them and they are free and clear.

670 They are in a position to go in and operate in a very short time after resumption of the manufacture of new automobiles for civilian use.

The shippers' testimony, of not only the leading manufacturers but also the common carrier driveaway companies, covering practically all of the middle west, east of Cleveland, and all of the New England states, also testified from their intimate knowledge of the situation that this service would be needed upon return to normal conditions. So we say, that on convenience and necessity we feel that we have made a showing which should entitle us to the certificate.

Chairman PATTERSON. Do you care to reserve any of your time?

Mr. FOSTER. I was going to say I would like to reserve the other time for rebuttal.

Chairman PATTERSON. Mr. Eisen.

Argument of Mr. S. S. Eisen on behalf of Nicholson Universal Steamship Co.

Mr. EISEN. May it please the Commission, to clarify the question of the "grandfather" application, may I state that although the applicants originally sought "grandfather" rights, they did so wholly on the theory that some years ago they acquired certain vessels, three vessels, to be exact; that they converted two of them into automobile carriers, the third being an automobile carrier.

What Mr. Foster didn't tell you was those vessels were

671 acquired and converted for one purpose only, to charter and lease them to the Detroit and Cleveland Navigation Company. That, and that alone, was the purpose of the applicants' investment in the vessels, they admit that. They never engaged in transportation as a common carrier. They never desired to take on the burden of a common carrier, they merely acquired these vessels for chartering or leasing to the Detroit and Cleveland

Navigation Company. The Detroit and Cleveland Navigation Company alone was a common carrier. The Detroit and Cleveland Navigation Company. "grandfather" rights on the operation of these vessels and its other vessels.

The applicants, because of the provision of Section 302 (e) of the Act, which provides the chartering or leasing of vessels to a carrier is an exempt transaction, have admitted since the original hearings that they do not possess "grandfather" rights and have waived claims to "grandfather" rights.

Now Mr. Foster has referred to certain motor carrier cases which are clearly distinguishable from the situation herein. We should all bear in mind that the established "grandfather" Lake lines at all times in the past made available to the shipping public the transportation facilities adequate to carry the tonnage. True, of the transportation facilities so made available there were three of the applicants' vessels, but they were operated by the
672 common carriers. When Mr. Foster says those vessels were acquired because the D. and C. said they would not invest in vessels, he doesn't tell you the full story. A Detroit and Cleveland official told Mr. McCarthy, when Mr. McCarthy suggested investing his money in the vessels, that if he did so, if McCarthy did acquire those vessels, that the D. and C. would not acquire vessels of their own and put McCarthy's boats out. In other words, if Mr. McCarthy acquired these vessels, the Detroit and Cleveland would operate them and Mr. McCarthy would have no fear of having his vessels put out, but there is nothing in the record that the established lake lines refused to acquire and supply necessary vessels.

Chairman PATTERSON. Was he employed by the Detroit and Cleveland before he leased the vessels to them?

Mr. EISEN. Yes, he was employed as a solicitor of automobiles, and after working as a solicitor for a short time, he suggested to the company that, I believe it was after the company had put on the steamer "Fitch," an exclusive automobile carrier, that he would make available additional vessels at his expense if the company would not put on any vessels of their own to supplant and put [illegible] vessels out of operation, and the company so agreed.

The investment of the T. J. McCarthy Steamship Company was solely for the purpose of chartering and leasing vessels, not to engage in operations as a common carrier.

673 Commr. LEE. Do I understand Mr. McCarthy actually owned some vessels up there?

Mr. EISEN. He owned three vessels which he leased or chartered to a common carrier.

Commr. LEE. When his lease charter runs out, what is he going to do with it?

Mr. EISEN. He is operating in the boat trade, they can operate in the boat trade without permits, those vessels were acquired solely for charter and lease purposes.

Chairman PATTERSON. The lease has run out some time back?

Mr. EISEN. The lease was terminated with the termination of, when all were reconverted back into bulk carriers.

Mr. McCarthy testified that if he did not secure the rights herein, unquestionably he would continue to lease those vessels to the other lake lines in the future.

Commr. LEE. Under the law, can a man who leases or owns vessels, be required to charter them to somebody else?

Mr. EISEN. No, he can not, but he has no "grandfather" rights, that is clear. Can we interpret the law if anybody who owns a vessel, ipso facto, has rights? If that is the redeeming feature all a man has to do is go out and buy a vessel, or acquire a vessel.

Commr. PORTER. He didn't go out and buy these, he has had them all this time, your illustration isn't very accurate.

674 Mr. EISEN. But he had them for operation as a common carrier.

Commr. PORTER. Your suggestion that any man could get one, saying, simply, go out and buy that, isn't the situation here. This man has had them all the time.

Mr. EISEN. Let me give you a parallel. You grant restricted rights to someone, say, a lumber carrier, why couldn't that carrier come in and say, "Sir, you have granted my certificate to engage in the transportation of lumber, I now desire to engage in the transportation of automobiles, package freight, etc.

Commr. PORTER. That is not a good illustration. These boats also hauled automobiles, he is asking now for the right to haul automobiles, not to change to lumber, grain, or anything else.

Mr. EISEN. You have your owner-operators under the Motor Carrier Act, the Commission has clearly said that two operators are not to get "grandfather" rights, or, two rights under one operation. Why not the motor carriers, so-called owner-operators, hundreds and hundreds who own trucks and lease them to the bona fide carriers. They now come before you and say, "I have owned trucks for the last ten years. You haven't given me any rights under the 'grandfather' clause. I have an investment and I want my investment protected. There is nothing under the law

675 that makes me lease my trucks to the owner."

Commr. PORTER. If 85 percent of the people that have been patronizing it say they are going to be needed for the future, that might make some difference, mightn't it?

Mr. EISEN. I am glad you mentioned that. The so-called 85 percent of the manufacturers—Ford, General Motors, Chrysler, Hudson—certainly are in the trade, to some extent, in this country.

Commr. PORTER. Yes, their testimony showed this, that these vessels were being used, the same number of vessels will be required in the future, we didn't want any diminution of vessel carriers on the Lakes.

Mr. EISEN. Who has said anything about lessening the quantity of automobile-carrying facilities on the Lakes? The established lake lines have always made vessels available. We have said we will make them available in the future as we have established and always made them available in the past. Now, because the war has interfered, are the "grandfather" lines to lose all their rights because the situation has changed?

Commr. PORTER. Nobody is taking away your rights. You still have your rights. You have still got the same vessels you
676 have always had. Nobody is interfering but the competition of the vessels you have been using, to some extent.

Mr. EISEN. If you restricted some of the Detroit and Cleveland Navigation Company boats to exactly the same number of boats they had in the past, this applicant would be restricted to the three boats they used in the past, and maybe the situation would be different. That isn't what you are doing. You are giving them unlimited rights to come in and put in as many vessels as they want.

The record shows in the past the ratio between carrying facilities and tonnage was over-balanced. There was more carrying facilities than automobile tonnage. The Nicholson Universal Steamship Company operated one steamer exclusively as an automobile carrier, the automobile tonnage never being such as to warrant the inclusion of those automobile boats.

One by one these automobile boats were converted into bulk and freight carriers, lessening the carriers of automobiles because there was not enough tonnage.

What you in effect say here is, this man has an investment in vessels. He no longer has an investment as I shall so show. They are not automobile carriers, true. The "grandfather" carriers had an investment in vessels, true. The "grandfather" carriers were entitled to some protection, but let's forget about the
677 "grandfather" carriers. Let's not give them any protection, the established line has their investment, let's close their eyes to this investment. A newcomer in the field of automobile transportation as a common carrier gets predominant consideration, that is in effect what the majority of Division Four and the Examiner recommend denial of, and that is the law, I submit.

Mr. Commissioner Porter's dissent carried very prominently the following language referring to the report and order of Division Four: "Applicants own three vessels, equipped to carry passenger

automobiles." And, in the same paragraph, "* * * but the other two were open-hold bulk freighters, which were later converted into automobile carriers at an approximate cost of $40,000 each."

Prominent consideration was given to the fact that these men had an investment in vessels, that they made an investment in converting those vessels to automobile carriers, but the only shipping conversion of those vessels was not for the purpose of engaging in transportation as a common carrier, but purely for the purpose of leasing and chartering. They did that in the past, regardless of whether or not you deny in the certificate here that they can continue to do so in the future, their investments cannot be impaired. In no way can they be impaired unless you reverse everything you said before, and say that the fact that a man has
678 vessels, the fact that a man has an investment in facilities, ipso facto, constitutes grounds for granting certificates of public convenience and necessity. If you do that, I say that hundreds and hundreds of owner-operators who did not obtain rights from you under Part 2 of the Act are automatically entitled to certificates of public convenience and necessity because they had an investment in carrying facilities over a period of years.

Commr. LEE. Some of us thought they should have been issued authority.

Mr. EISEN. Yes, sir; you did; and you clearly enunciated the law in the Dixie-Ohio case, etc., before the U. S. Supreme Court. It was held that only one carrier, not two, can obtain rights out of the one operation.

Mr. Sullivan has graciously consented to give me five minutes of his time, if I may.

Now, the applicants' case, as originally submitted to the Commission, was predicated on two fundamental factors. One, in the investment in their vessels, which they thought should constitute grounds for the issuance of a certificate. Two, they made a big fuss about the fact that while they had chartered their vessels to the Detroit and Cleveland Navigation Company, the Detroit and Cleveland Navigation Company obviously used those vessels. They used those vessels in carrying certain automobile tonnage.

They therefore continued certain passenger operations by
679 the Detroit and Cleveland Navigation Company bespeaks a future need for the operation of those specific vessels.

This was made despite the fact that the established lake lines at all times made available to the shipping trade adequate shipping or carrying facilities. There has never been a time when it was necessary for a newcomer to come into the field and supply vessels. Bear in mind, these vessels that the applicants own were made

available to the trade by the established lake lines. There is nothing in this record that would sustain the contention that had these vessels not been available, others of a similar type would not have been supplied. As a matter of fact, the record clearly belies it.

The Nicholson Universal Steamship Company's experience in necessitating the convenience of these automobile carriers limiting the carrying capacity of their vessels clearly shows there were always enough automobile-carrying facilities on the lakes.

Our whole complaint has been that there has been a surplus of transportation facilities over the tonnage carried, and for that reason, except when there was an abandonment of automobile production, the established automobile carriers lost money.

Meeting a change on the lakes, applicants sought and were
680 granted rehearings. For the first substantial change, they alleged they had obtained a certificate for temporary authority. Notwithstanding that the issuance of temporary authority doesn't carry with it the promise of a corresponding granting of permanent authority, they urged that fact.

Let us look at the factors underlying the issuance of temporary authority. In 1942 the U. S. Navy requisitioned, as we all know, a large number of vessels, the Great Lakes being no exception. The Detroit and Cleveland Navigation Company at that time was operating in a nightly service between Detroit and Buffalo. The Navy came along unexpectedly and picked up the steamer "Greater Buffalo," and knocked the schedule apart. The schedule was immediately revamped to a tri-weekly sailing. This was the latter part of 1942. The applicants' thereupon, with the assistance of the Army, secured temporary authority to assist over this emergency. That is the purpose of temporary authority. They did carry, in 1942, some 900 vehicles, as Mr. Foster indicated. The season of 1943 came along and the Detroit and Cleveland Navigation Company, as has always been the custom of the established lake lines, established nightly sailings. They were then in a position to carry, did actually carry the entire automobile offering.

There was no need for outside assistance. At the June hearing in
1943 it was clearly established that applicants had not car-
681 ried a single automobile. That is the way the record shows and stands.

Clearly, the temporary authority is no ground whatsoever for the issuance of permanent authority in the future, particularly under those facts.

The second changed situation is the automobile reconversion in the boats. Before applicants can carry a single automobile below decks, they have to reconvert the decks to automobile carriers, and this is the substantial investment they referred to and Mr.

Commissioner Porter referred to in *in* his dissent. In other words, they will have to again invest in order to reconvert their vessels into automobile carriers. Therefore, what will be impaired is not existent today. If it could be impaired, we deny it could ever be impaired because of the nature of the reconversion.

Now, Mr. Foster referred to the fact that Nicholson Universal voluntarily sold five vessels. The truth of the matter is, we are now operating a fleet of nine vessels on the lakes. Title to five of those vessels rests in the U. S. Maritime Commission. We have already undertaken negotiations, as the record will show, to require title after the war. We are still operating that fleet of nine vessels. We are operating it on the Great Lakes.

Now, all of the established lake lines have clearly indicated to the Commisison that they have always been in automobile
682 transportation, that they desire to stay in the automobile transportation field. They have testified and established they have the financial wherewithal to acquire vessels if additional vessels are necessary. They have all testified that after the war, when the need arises, they will put into the service as many vessels as the service needs require. Now in addition to the above facts, there is another factor that I think is worthy of some consideration. That is the Columbia Transportation Company case.

Prior to 1940, the bulkers operating on the lakes made available to the established water lines certain of their facilities through charter arrangements. When the passage of the Water Carrier Act became imminent, the bulkers refused to continue that arrangement because of the fear that it might interfere with their contention that they were contract carriers, exempt from regulations.

Since that occurred, the Commission, by Division Four, issued its report in the Columbia Transportation Company case, since reopened, but I will come to that, in which it found that the Columbia Transportation Company and others similarly situated were common carriers. This changed the situation.

In reargument, counsel for Columbia Transportation Company admitted that they were common carriers and said they did not contest the Division's finding.

Now, holding that such carriers are common carriers,
683 has made available to the established lake lines, through negotiations, particularly to the Nicholson Universal Steamship Company, a fleet of 30 vessels in the post-war era that it can draw upon at any time.

Even without that fleet, the lines, and the record, indicate that sufficient carrying space will be made available with the potentionality of this excessive pool of bulker facilities, that there will

again be brought into play the tremendous excess of carrying facilities over tonnage offered.

Now, in recommending dismissal, the examiner following Division Four's recommendation, has, however, recommended the granting of a so-called temporary authority. I guess that is the proper term to use, I say so-called because it *si* something akin to nothing we have ever had or seen before us. He would recommend that for one full season of navigation, after the termination of the war, which war he doesn't say, European or Asiatic; after the production and shipment of motor vehicles for civilian use.

Commr. AITCHISON. Are we engaged in two wars?

Mr. EISEN. All I can say is what the papers indicate to me, the opinion is that the European war will terminate first, then the Asiatic war. Does the examiner mean after the European conflict terminates, the operating rights should be granted after the Asiatic, both, or what?

684 Now, in granting temporary authority, it is necessary that two requisites be made, immediate and urgent need. What is the immediate need? Obviously there is none, there is no production, the established lines are carrying on, the applicants have temporary authority today in case of any need. There is no immediate need, no urgent need. Why temporary authority?

The examiner recommends the Commission find what he intends, I assume, is that the Commission find an immediate and urgent need, not as of today, but some indefinite, indeterminate future date. He doesn't take into consideration, of course, how many automobiles will be produced in the first year. How they will be shipped. How many automobile boats, how many vessels, will be made available for the carriage of that trade. But he says in order to play safe, let's give these fellows one year, some indeterminate, indefinite date, cause them to make investment in reconversion, then, what will happen, they will say, "Here, we have this investment in automobile carrying boats; therefore, give us permanent authority."

Beyond that Section 311, if I may just finish this one thought, Section 311 of the Act, which is included in the Act by virtue of the second War Powers Act, 1942, permits temporary au-

685 thority, which must expire December 31, 1944. The applicants already have that temporary authority, the full amount. Therefore, if you issue temporary authority beyond that time, then you do something for which, as I see it, you have no underlying congressional authority.

I thank you.

Chairman PATTERSON: Mr. Loos.

Argument of Mr. Karl D. Loos on Behalf of the Detroit & Cleveland Navigation Co.

Mr. Loos. May it please the Commission, I appear for the Detroit and Cleveland Navigation Company, in opposition to the granting of any authority to the applicants.

First, I would like to state just briefly what the situation has been under this temporary authority that has been granted to the applicants in 1942. The McCarthy Steamship Company, under its temporary authority, carried a total of 950 vehicles in 12 loads. In 1943 they carried none. In 1943 the Detroit and Cleveland Navigation Company had its third boat back in service, one of the boats had been requisitioned and not able to get another boat back in service to replace it. In 1943 the Detroit and Cleveland Navigation Company carried some 40,000 vehicles, which represented only about 75 percent of its capacity. So the present needs are adequately met by the existing "grandfather" lines, of
686 which the Detroit and Cleveland is the only one that now has automobile equipped boats in service. The Great Lakes and Nicholson will have the rights under their "grandfather" certificates to engage in this transportation, and will unquestionably engage in it after the war when automobile production is resumed. So there cannot be any possible question that there is no present need for the issuance of a certificate of public convenience and necessity to a newcomer, the T. J. McCarthy Steamship Company.

The only possible point, it seems to me, on which there can be any room for argument and disagreement is as to what the future, as to future needs and what consideration should be given the McCarthy Steamship Company because it does own three boats, two of which had been in the past used by another common carrier in the transportation of automobiles.

First, as to the future needs. I submit it is too early now to issue any certificate of public convenience and necessity on the basis of what the future needs may be after the war is over and after the production of automobiles is resumed. I submit that any decision of that future need ought to wait until we have a better idea of what is going to happen. These three traffic managers that were referred to, of the automobile companies, can't tell any better than you or I what is going to happen after the war and when it is going to happen. Of course, these traffic
687 managers would like to have a surplus of transportation. But that is not the object of this act. If it means anything, it means that it is going to protect the existing carriers. It is going to give them a right to operate without the threat of encroachment by new carriers.

Commr. PORTER. In other words. are we entirely to be stopped from any additions, and so forth?

Mr. LOOS. No, sir. As soon as they fail to provide adequate transportation, you can give anybody the right to come in and provide the additional facilities that may be needed. But until the existing carriers that have "grandfather" rights fail to meet the transportation demand, I submit that if the statute means anything, it means that new carriers aren't to be given certificates of public convenience and necessity to come in and put a surplus of transportation facilities into that field.

Commr. PORTER. Even tho that past or present service may be unsatisfactory to the people that wanted it, that used it, just because the quality isn't there they have to use it, have they?

Mr. LOOS. I agree it has to be satisfactory service. There is nothing in this record to justify the finding that the past service in the transportation of automobiles rendered by the Detroit and Cleveland Navigation Company, the Great Lakes Transit Company and the Nicholson Universal Steamship Company has
688 been unsatisfactory. I submit that you can't make such a finding on this record. First, I say it is too early to make any prognastication into the future and issue a certificate of public convenience and necessity on the basis of an attempt to peer into the future. Nobody can do it. While the Commission probably has the best foresight of anybody in this town or this country, I submit it isn't equal to that task of looking into the future and saying at some time in the indefinite future there may be a need for additional transportation facilities for the transportation of automobiles on the Great Lakes.

Commr. PORTER. Am I to assume you don't have much faith in this post-war planning we hear of?

Mr. LOOS. No, sir; I don't have much faith in this post-war planning. I think it will have to be changed a lot of times before anything is put into effect.

Now, what consideration should be given to the McCarthy Steamship Company because it does own a couple of boats, because they were operated in the past in the automobile business? First, bear this in mind, that these boats that the McCarthy Steamship Company acquired and the other company, I will just treat them as one, these three boats were, in the first place, cargo carriers, they weren't built as automobile boats, they were just plain car-
riers. The McCarthy Steamship Company acquired them
689 and converted them into automobile carriers. And they spent some money on that, true. But they had them in service for a long time and they had some revenue on them. They were chartered to the Detroit and Cleveland Navigation Company,

which operated them as a common carrier. Now then, those two boats which were converted automobile carriers (only two of them were converted), those two boats have been reconverted into ordinary cargo carriers and are in the grain business now.

Now I submit that the McCarthy Steamship Company today is in no different a position than the owner of any bulk cargo carrier may be, after this war is over. When they are no longer needed in the grain trade, they say, "we are going to convert these into automobile carriers, and we are going to come to the Commission and ask for certificates of public convenience and necessity to engage in this transportation of automobiles on the Great Lakes, because for some time in the past (in the present war period), we carried automobiles on the decks of these boats, these grain boats".

I say they are in no different a position than any owner of a cargo boat might be. I say, if they do come to you after this war is over, and you can tell what the present transportation needs are, you should give them no right to participate in this
690 transportation unless at that time the "grandfather" carriers are not meeting the transportation needs. And I believe that there isn't any question at all but what when this war is over and normal conditions are resumed, gradually resumed, as they are resumed the lake lines, the three existing lake lines that have "grandfather" rights, Detroit and Cleveland Navigation Company, Great Lakes Transit Company, and Nicholson Universal Steamship Company, will keep pace with the need for transportation of automobiles. Each one of them is adequately financed. Each one of them knows how to operate. Each one of them is an efficient operator. And those three lines are not going to pass up any traffic. There will probably be plenty of boats available, it is——

Commr. ATTCHISON. Anybody peering into the future now?

Mr. BOOS. Yes, I am peering into the future now. But I won't do it if you won't. If you are going to peer into the future this is what you should see. I beg of you not to peer into the future and deny the application on the ground that it is too early to grant it now on the basis of future need and on the further ground that the mere fact of ownership of these vessels carries no rights.

I thank you.

Chairman PATTERSON. Mr. Sullivan.

691 *Argument of Mr. Frank W. Sullivan on behalf of Great Lakes Transit Corporation*

Mr. SULLIVAN. May it please the Commission, I speak in behalf of that water carrier referred to here, the Great Lakes Transit Corporation. I shall be very brief. In fact, I wish to amplify

upon only one thought which was the one touched upon at the conclusion of Mr. Eisen's remarks. As a matter of fact, we appear here in person in order that you may see that we are alert to the thought that the Commission grant no rights, even under the "grandfather" clause, beyond the traditional experience of the carrier involved and in this instance in particular, that if you do grant temporary rights, they be not granted for any more than the statutory period.

Commr. MAHAFFIE. I thought the temporary rights were now outstanding for the statutory period?

Mr. SULLIVAN. They are. I said for not more than the statutory period. It is to that I shall address mayself.

The Examiner's recommendation, if you will recall, is that temporary rights be granted for a period of one full season of navigation after the termination of the war and the resumption of automobile manufacture and shipment by water. Now, that can extend beyond the statutory period. We ask for a limitation to not more than the statutory period terminating December 31, 1944.

692 Commr. AITCHISON. That period ought to be a pretty good test, shouldn't it, as to whether or not there is a real need for added carriers, besides these regular lines?

Mr. SULLIVAN. That I submit is a test which should be made either within the statutory period, or after its expiration.

Commr. AITCHISON. That is what the Examiner has proposed.

Mr. SULLIVAN. He has granted rights, I maintain, beyond the statutory period. Assume, as your Honor says, that it might be a test, is there anything in the statute which permits you to expand the temporary rights for the purpose of giving a test?

Commr. AITCHISON. Is there anything in the statute which prevents us, when we find future convenience and necessity, from finding that convenience and necessity will exist only for a given time?

Mr. SULLIVAN. I think not.

Commr. AITCHISON. That is the Examiner's proposal, is it not?

Mr. SULLIVAN. Yes.

Commr. AITCHISON. Wouldn't it give you an opportunity for a test so you wouldn't have to do any crystal-ball gazing?

Mr. SULLIVAN. That test could be made without the grant beyond the statute. And I also would like to submit that
693 the period effected by the Examiner is not susceptible of determination for the reason Mr. Eisen touched upon.

Commr. AITCHISON. What is that?

Mr. SULLIVAN. That is one year, forget the one year, a period subsequent to the end of the war plus the resumption of automobile manufacture and shipment by water.

Commr. AITCHISON. There might be some uncertainty about that latter part as far as the end of the war is concerned, that is always declared by Congress, isn't it?

Mr. SULLIVAN. That touches upon another thought I want to make.

It appears that, conceivably, the European conflict will be over before the Asiatic. Let me finish, if you please. And automobile manufacture will be resumed on the Lakes, and the regular carriers will be back in the operation. But because the war is not completely over, the McCarthy Steamship Company permit would permit competitive operation.

694 Chairman PATTERSON. Mr. Foster, you have twenty-five minutes.

Reply argument of Sparkman D. Foster, on behalf of T. J. McCarthy Steamship Company

Mr. FOSTER. I don't know how this test could possibly be made within the year 1944, because under the present regulations on the Great Lakes for the O. D. T. and W. P. B. last year, neither one of these companies were allowed to transport automobiles on the decks of their boats. The O. D. T. would not have granted them a permit even with these operating rights.

Mr. Eisen points out and argues very strenuously, in view of the Columbia Transportation case, there will be a pool of some thirty odd boats available to protestants Nicholson Universal Steamship Company after this war is over. We questioned Mr. Hewitt at length on it at the further hearing and he had no contract with anyone. He thought that possibly something might be worked out. That is how definite that was, but I do think that after the showing that has been made in these cases and after the shipper testimony which we have had in these cases when they start talking about protecting the other old line carriers. Certainly McCarthy, even on the showing he has made here, should deserve protection against the pool of some thirty-odd boats of various companies who have apparently never hauled any automobiles.

695 On the question of conversion of these boats, the testimony shows they will have to be converted back. They were converted to bulk carriers at the urgent insistence of the O. D. T. A large part of his investment on the original conversion was the purchase of all this material which went into the conversion. Part of it was labor. Of course that material is available for the reconversion of these ships. They represent a substantial investment, now stored at the shipyard.

On the temporary rights they talked so much about, both of these companies were still operating at the time they obtained these temporary rights, on the theory they were entitled to operate under their original "grandfather" application which at that time had not been determined. They were in the transportation of grain from the head of the Lakes to Buffalo. The army asked them if they could move these motor vehicles. They said they could. They had been limited in the amount they could move because, of course, they could only move them on the top decks of these vessels, as they passed Detroit, pick them up, deliver them at Buffalo.

We came down, asked for temporary authority, not to transport automobiles, we assumed we had that, we had filed our tariffs, had a "grandfather" application that had not been disposed of, we supposed we had the right to transport automobiles. Until
696 it is decided, we were led to believe that by the Bureau of Water Carriers. We think we did have that right. What we did get temporary right for, and what the files will show we did get temporary rights for, was to transport grain and automobiles on the same vessel at the same time. The Commission granted us special permission to publish rates on grain, which we didn't have to publish unless we did commingle it with automobiles. On one day's notice, that is what that temporary right is, to transport automobiles and grain on the same vessels at the same time between Detroit and Buffalo. That is the temporary right they are talking about. We don't think that gives us temporary right to transport automobiles to Buffalo in full cargo lots of automobiles. It was never our intention to ask for that. All of the counsel completely avoided discussing the question of what the people who need this service and who use this service feel about it. They say that they have always provided transportation for automobiles in the past and they will provide them in the future. We do have to more or less peer into the future in discussing this case. I don't think for a moment lost sight of the fact the application was filed before the war. It came up for hearing almost immediately after we went into the war, and the testimony at that time, when things were, of course, uncertain and we had to peer even further into the future; just as sure as tomorrow is going to come, the automobile industry after this war is over are going to manufac-
697 ture motor vehicles again. They are an aggressive bunch. When they tell us they are going to manufacture automobiles after this war is over, they are going to manufacture them. I think when they tell us they are going to ship them by water, they feel these facilities are needed. I think we should give considerable weight to those people's opinions in the matter, even though it does appear to be looking somewhat into the future.

In a more recent case, decided as late as December by Division 5, this is the case of the Arco Auto Carriers, Inc., Extension, here again we have somewhat the same situation that we had in the Cooper case. The Division said on pages 3 and 4—this decision came down on December 19:

"The examiner found that public convenience and necessity do not require applicant's proposed operation. His finding appears to have been based in a great measure on the fact that since the date of hearing the production of automobiles for civilian use has been discontinued. While the curtailment in the production of automobiles during the national emergency results in a temporary diminution in the demand for the transportation of such commodities, it has not been our policy to deny an application because of the changed conditions resulting from the war, if the evidence otherwise supports a grant thereof. Normal conditions,
including the demand heretofore experienced, are bound to
698 recur, and applicant should not then be expected to incur the cost and delay of a further proceeding."

Division 5 restated in slightly different language exactly what it did in the Cooper case. This case has been pending since May, 1941. We had the original hearing here in Washington. That was adjourned for further hearing in Detroit, which was had after we filed our amended application on convenience and necessity. We have had that hearing and had a still further hearing. We say that under the testimony which was offered in February, 1942, this Commission has a perfect right to grant this company's application on convenience and necessity, because had conditions been normal in 1942, none of these companies, none of the protestants, forgetting for a moment they were losing vessels due to requisition, none of them would have had the facilities to move the automobiles which the industry would have wanted moved.

The Commission further says in this same case, I am citing from sheet 4:

"Rail carrier protestants refer to the admissions made by several of the witnesses that the carriers now serving them have rendered a satisfactory service, and contend that such admissions
establish that existing transportation facilities from and to
699 the points applicant proposes to operate are adequate. With such contention we do not agree. An analysis of the complete testimony of such witnesses reveals that while they have been satisfied with the present service to the extent the available carriers were able to serve them, they do not think that the service now available affords them an opportunity successfully to meet competition and to give the purchasing public the expeditious delivery service desired. We conclude that applicant has estab-

lished that public convenience and necessity require its operation to the extent authorized by the findings herein."

The report said, "the carriers now serving them have rendered a satisfactory service"—right there I would like to say that Mr. Loos challenged you to examine his records and find any fault of the service given by the other carriers. Even with this applicant's vessels the testimony is replete with the cars that were not moved. The traffic manager of Chrysler testified it was necessary to revert to shipping by other means, not by the Nicholson Universal Steamship Company, but from the Detroit and Cleveland Navigation Company. When they say they furnished all these facilities, they simply did not do it, even with these applicants' boats. They go on the theory they did it throughout this case. They did it throughout the Nicholson case, because they had a potential capacity to move so many thousand automobiles, that they
700 had too many boats. The facts show the majority of these automobiles are moved over a five months period, not over an eight months period, which is the normal season over the lower Lakes for automobile boats. There was a six weeks period that practically no automobiles moved. In fact, this record on the showing made by Mr. Hewitt of protestant Nicholson Universal Steamship Company, during the month of August, 1941, just one boat could have moved to all ports on the Great Lakes all the automobiles which they were offered, because it is a seasonal thing. There were no automobiles to be moved during the period of change-over. So if those vessels could have run, and the automobile companies could have given the traffic, they theoretically could have moved all these automobiles, but they couldn't move them on the basis that the industry and the shippers wanted them moved, because they simply could not store them and ship them out by boat at the convenience of the boat owner.

"They contend that such admissions establish that existing transportation facilities from and to the points applicant proposes to operate are adequate. With such contentions we do not agree."

All these protestants go on the theory and stress very strongly that the mere fact there wasn't an immediate need in 1942 for the operation of these vessels to that capacity, and that in 1943
701 they didn't move any automobiles, that should be the basis on which you denied them rights.

This company didn't come in and ask this Commission to grant them convenience and necessity just because they owned three boats. They made a complete showing as to what these boats cost them, what it cost them to convert, but at the hearing, the original hearing in Detroit in February, 1942, they did exactly what I would expect anybody to do in a public convenience and necessity case. They called on the people who used this service in the past and who

would use it upon return to normal conditions. They were the shippers of the automobiles, of 85 to 90 per cent of all the automobiles shipped by water.

In addition to that, the common carrier forwarder group that ships these automobiles by truckaway and driveaway from Cleveland and Buffalo to Pennsylvania and all the New England states, those people testified the length of time for which they would have to wait for automobile boats at Buffalo and Detroit. We say clearly from this record, we are not here asking for any sympathy or anything else because these companies invested in three boats. They invested in these at a time when no one knew what the 1943 Transportation Act was going to be.

We say on the basis of the record, not only the original hearing, but the further hearing, if these shippers say this service
702 will be needed, I don't know who possibly can be a better judge of it. We admit there was no present urgent need for all three of these boats to be in the automobile trade. We know very well if we attempted to convert them into the automobile trade, the O. D. T. and W. P. B. would tell us we couldn't do it. We do say it would work extreme hardship on these companies to have them go through all they have gone through before, at some later date, when under the showing which they have already made they are entitled and this Commission has a perfect right to find that the future convenience and necessity will require this service.

We get back to one other point that has been stressed here. These vessels are bulk carriers and can be converted back or left as bulk carriers. There was not a single automobile carrier in the lake that was not formerly a bulk carrier back in 1925 when all the wooden automobile carriers began to be retired, they started buying boats for conversion into automobile carriers. The old original Nicholson Transit Company bought two little boats. With one possible exception there hasn't been a single vessel purchased and converted to an automobile carrier that wasn't at that time obsolete so far as the bulk trade was concerned under normal conditions.

The two larger vessels of these applicants, to have con-
703 tinued in the bulk trade as such, would have had to have had new stanchions. They were comparatively small carriers anyway. Their former owners sold them, so they could not operate them in the bulk trade.

The same thing was true of all the nine vessels of the Nicholson Universal Steamship Company. The Great Lakes Transit Company converted one of their smaller freight vessels, the Utica, into an automobile carrier. The testimony is undisputed in this case that it could be converted back.

They also said if you deny this application that it could not be ruinous to these applicants. Another point I want to make is that we are not seeking this application with the idea of chartering these boats to the Detroit and Cleveland Navigation Company. The steamship George H. Ingalls was chartered out, not to the Detroit and Cleveland Navigation Company, but to the Cleveland Iron Company who did operate it because they could give a cargo both ways, during 1937 and 1938, and as a bulk carrier. I think the Commission, certainly some of the members of Division 4 will recall in the Nicholson Transit case where two of these same protestants were very active. The M. A. T. Line, since merged with protestant Great Lakes Transit offered Nicholson for underdeck carriage of automobiles $8 and $10 for 1940, and $12 for 1941, to transport these automobiles, then they come in and protest the rates which that company published of $18 and something a
704 car. So to say that this company has got to be placed at the mercy of someone coming along and chartering these boats on whatever basis they want to charter them is simply not fair and not in the public interest. We feel we have made the necessary showing, despite the fact that we have to peer somewhat in the future. We think this case should be decided that these companies should be granted certificates on convenience and necessity.

I thank you.

Chairman PATTERSON. This case will be taken under consideration by the Commission. We will now adjourn.

(Whereupon, an adjournment was taken at 11:15 o'clock a. m.)

Plaintiffs' Exhibit No. 2

Witness McCarthy

RELIABILITY

Established in 1868

Complete insurance coverage from time automobiles are received until delivered to you or your agent at destination port.

DAILY SERVICE

During entire season of navigation; no interruption during model changes.

ADEQUATE FACILITIES
10 BOATS

Largest terminals at all ports. Six combination passenger, automobile and merchandise steamers. Four specially equipped automobile and merchandise steamers.

A Personal, Efficient and

Courteous Transportation Service to the

AUTOMOBILE TRADE

Between

DETROIT—CLEVELAND—BUFFALO

"The Service with a Punch"

"Ship by Ship and Save"

Your Local Agent:

For information, rates and service, phone or write:
D. & C. NAVIGATION CO.
Automobile Division
DETROIT, MICH., OFFICE
T. J. McCARTHY, Manager
W. J. HOFFMAN, General Agent
210 Wayne Street
Phones: CAdillac 9800—
CHerry 6956
BUFFALO, N. Y., OFFICE
J. P. RANAHAN, General Agent
56 Main Street
Phones
Cleveland 7756
Cleveland 8500
CLEVELAND, OHIO, OFFICE
East Ninth St. Pier
Phone, Cherry 9550
NEW YORK, N. Y., OFFICE
10 Rockefeller Plaza
Suite 604
Phone: Circle 6-2797
PHILADELPHIA, PA., OFFICE
2402, 14 Market St.
Phone: Rittenhouse 9868

706 *Plaintiffs' Exhibit No. 3*

Interstate Commerce Commission, Washington

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Pages 150 to 152, both inclusive; Pages 162 to 226, both inclusive; and Pages 229 to 272, both inclusive; of the transcript of the stenographer's notes of the hearing held September 8, 9, and 10, 1941, at Washington, D. C., and Exhibits No. 1 to 10, both inclusive, filed at said hearings in Docket No. W-732, Nicholson Transit Company Contract Carrier Application, the originals of which are now on file and of record in the office of said Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 24th day of August, A. D. 1944.

[SEAL] W. P. BARTEL,
Secretary of the Interstate Commerce Commission.

707 Exam. GRAY. Is that all, Mr. Eisen?

Mr. EISEN. That's all.

Mr. FOSTER. No further questions, Mr. Holt.

Mr. EISEN. Off the record.

(There followed a discussion off the record.)

Mr. EISEN. Show that upon agreement of all parties Mr. Hewitt has been called out of order to testify.

F. L. HEWITT, Jr., being first duly sworn, testified as follows:

Direct examination by Mr. EISEN:

Q. Please state your name and address.

A. F. L. Hewitt, Jr., Detroit, Michigan.

Q. What is your capacity with the Nicholson Universal Steamship Company?

A. Vice president and general manager.

Q. You have heard the testimony presented in this proceeding so far?

A. I have.

Q. Do you recall a conversation with Mr. Shirley in December of 1940?

A. I recall the conversation with Mr. Shirley which I think Mr. Holt is referring to, but I am not certain it was in December. It was some time after the close of navigation.

Q. Will you please state in your own words exactly what transpired at that time?

708 A. The subject of our conversation was two things and it was very brief.

The first was the question as to my opinion as to whether outside bulk fleets would operate in the season of 1941 and to which I replied that to the best of my knowledge I did not think that they would.

The second was to the effect that he was both anxious to ascertain at that time or prior to the opening of navigation, as to what arrangements could be worked out for the Nicholson Universal Steamship Company to transport cars for the Holt Motor Car Company to Duluth on some arrangement less than called for or provided for by the tariffs issued by the Nicholson Line.

Q. And what was your answer?

A. My answer was that it was not possible to accomplish that.

Q. And was anything further said or done at that conference?

A. The conference was closed with that.

Mr. EISEN. Cross-examination.

Mr. FOSTER. No questions.

Exam. GRAY. That is all, Mr. Hewitt.

Mr. FOSTER. I would like to recall Mr. Holt for just a couple of questions.

CLARENCE L. HOLT resumed the stand and testified further as follows:

709 Redirect examination by Mr. FOSTER:

Q. Mr. Holt, you knew nothing of any attempt that Mr. Shirley was going to make to have any cars transported except under the regular tariffs as published by the company?

A. None whatever.

Q. Have you ever had any discussions with Mr. Shirley at all about having the Nicholson Universal Steamship Company file with the Commission a lower rate?

A. No.

Q. You have never had any discussion with him about the rates?

A. We have always paid the regular rate.

Q. You have always paid the regular rate?

A. Whatever the tariff rate was.

Mr. FOSTER. That's all.

Mr. EISEN. I have no questions. I am not impugning Mr. Holt's testimony at all. That is the reason I suggested he be present. I am not questioning Mr. Holt. I wanted this on the record with full opportunity for everybody to defend himself.

Exam. GRAY. Do you have some more witnesses, Mr. Foster?

Mr. FOSTER. Mr. McCarthy.

T. J. MCCARTHY, being first duly sworn, testified as follows:

Direct examination by Mr. FOSTER:

Q. Will you state your name and address, Mr. McCarthy?

710 Mr. SULLIVAN. You say after it became effective. It became effective the day before.

Mr. FOSTER. After it became effective.

Exam. GRAY. Are protestants ready to proceed?

F. L. HEWITT, Jr., being previously sworn, testified further as follows:

Direct examination by Mr. EISEN:

Q. Will you state your name to the Reporter once again?

A. F. L. Hewitt, Jr.

Q. And your address?

A. Foot of Bates Street, Detroit, Michigan.

Q. What is your present connection with the Nicholson Universal Steamship Company?

A. I am vice president and general manager.

Q. What, briefly, are your duties in that capacity?

A. I exercise general supervisory capacity over the operations of the company in all of its phases.

Q. What is the Nicholson Universal Steamship Company?

A. The Nicholson Universal Steamship Company is a carrier of property by water on the Great Lakes. It is essentially composed of two divisions, the first and by far its most important division is its automobile division. In this category it is a common

711 carrier engaged in the transportation of automobiles by water in regular route service between the ports of Detroit, Michigan, Duluth, Minnesota, and Cleveland, Ohio, Milwaukee, Wisconsin, and Buffalo, New York. We also operate some irregular route services on the lakes which are not important for this proceeding.

Our second division is our bulk division. In this category we transport certain bulk commodities such as coal, grain, ore, etc., in so-called bunkers which we operate on the lakes.

Q. How many vessels does your company operate on the Great Lakes that are, or can be, utilized in the transportation of automobiles?

A. We operate twelve vessels, all of which are being used in the transportation of automobiles on the Great Lakes.

Q. Will you please describe those boats, indicating the automobile carrying capacity of each per trip?

A. The "Woodruff" has a carrying capacity of approximately 450 automobiles; the "Sonoma," 450; the "Coralia," 370; the "Crescent City," 360; these four vessels are specifically and exclusively designed for the transportation of automobiles. They carry no

other freight. We also operate the "Penobscot" which carries as many as 260 automobiles west-bound but which is, at times, utilized for the east-bound transportation of bulk commodities. The "South Park" carries 60 automobiles west-bound and bulk freight east-bound. The "Adam E. Cornelius" which carries 70 automobiles west-bound and bulk freight east-bound; the "Adam E.
712 Cornelius, Jr." carries 70 automobiles west-bound and bulk freight east-bound. The "Sonora" and "Sultana," each of which carry 50 automobiles west-bound and bulk freight east-bound. The "Richardson" can carry 60 automobiles west-bound and would carry bulk commodities east-bound. The "Resolute," which is a barge, operating in conjunction with the "Sonora" or "Sultana," can carry 35 automobiles west-bound and is used in the transportation of bulk commodities east-bound. The last eight vessels which are utilized east-bound for the transportation of bulk freight are commonly known as bulkers on the lakes and hereafter in my testimony when I refer to bulkers I have reference to the vessels which can be utilized for the transportation of bulk cargo. This gives us a total over-all carrying capacity per trip of 2,285 automobiles.

Q. Is your company's operation seasonal in character?

A. Yes; it is limited to the season of open navigation on the lakes which usually runs from April 1st to November 30th of each year. For the balance of the year all the automobile carriers on the lakes are tied up.

Q. Will you briefly describe the piers, wharves, and other facilities owned and operated by the Nicholson Universal Steamship Company?

A. We maintain terminals at the ports of Detroit, Duluth, Milwaukee, Cleveland, and Buffalo. These terminals are all equipped with the latest designed material and equipment for the proper handling of automobiles.

713 Mr. ELDRED. Mr. Examiner, might we just go off the record for a second?

(There was a discussion off the record.)

By Mr. EISEN:

Q. What is the approximate overall investment of the Nicholson Universal Steamship Company in its boats and equipment, terminals and other facilities utilized in the transportation of automobiles?

A. In excess of $2,753,000.00.

Q. What is the approximate number of employees hired by the Nicholson Universal Steamship Company during the season of open navigation?

A. Approximately 700.

Q. Is your operation to the Port of Duluth an important portion of your activities?

A. Yes; the Port of Duluth is of tremendous importance to our entire set-up. Duluth is one of the principal bulk shipping centers on the lakes. We have one of our so-called bulkers in Duluth on the average of at least one every five days. Accordingly, we are able to utilize this boat space in the transportation of automobiles to Duluth and carriage of bulk commodities out of Duluth. This we have been doing for a good number of years. In addition, our automobile operations to Duluth have always constituted an essential part of our entire operations. The transportation of automobiles to Duluth has enabled us to utilize automobile boat
714 facilities that would otherwise be idle. It has enabled us to utilize our automobile carriers which in the absence of the Duluth tonnage would have to be tied up at our docks. Both the tonnage and resulting revenue from the Duluth transportation has been an important element in keeping the Nicholson Universal Steamship Company in operation.

The name and reputation of Nicholson Universal Steamship Company is synonymous with automobile service to dealers and distributors of automobiles at any place on the Great Lakes and Duluth is one of such places. To eliminate Duluth or any other important automobile receiving port on the Great Lakes would have a very detrimental effect on our name and reputation. Duluth is the third largest automobile port on the Great Lakes, and for this reason, as well as other stated reasons, seriously needs our service to the same extent and degree as it has been carried on there in the past.

Q. Have you made a study of the total number of automobiles handled by the Nicholson Universal Steamship Company to all ports for the last few years?

A. I have made a study and have set that study down into an exhibit which bears the caption, "Statement showing total number of automobiles handled by Nicholson Universal Steamship Company to all ports for the years 1938, 1939, and 1940." Obviously the transportation involved in this exhibit is the movement of automobiles from the port Detroit.

Mr. Eisen. May we have that exhibit marked for identifi-
715 cation, Mr. Examiner?

Exam. Gray. I will identify this as Exhibit No. 1.

(Exhibit No. 1, Witness Hewitt, marked for identification.)

Exam. Gray. You offer that in evidence at this time or merely for identification?

Mr. Eisen. Well, either way that is best. I have a number of them; if we are going to accept them as we go along, that is perfectly satisfactory.

Exam. GRAY. Perhaps we had better merely identify them now because there may be some objection to some of them.

By Mr. EISEN:

Q. Have you made a similar study showing the total number of automobiles handled by all Lake Lines to all ports from Detroit, Michigan, for the corresponding years of 1938, 1939, and 1940?

A. I have such a study, which is reproduced in my next exhibit.

Mr. EISEN. May we have this marked for identification, Mr. Examiner?

Exam. GRAY. I will identify this as Exhibit No. 2.

(Exhibit No. 2, Witness Hewitt, marked for identification.)

By Mr. EISEN:

Q. Have you prepared an exhibit showing the percentage of the total lake transportation of automobiles for the years 1938 through 1940 carried by the Nicholson Universal Steamship Company?

716 A. I have, that is my exhibit.

Exam. GRAY. This will be identified as No. 3.

(Exhibit No. 3, Witness Hewitt. marked for identification.)

Mr. SULLIVAN. In that caption there is a star by the word "lines." I take it——

Mr. EISEN. Forget about it.

Mr. SULLIVAN. I suppose you mean the same lines as Exhibit 2?

Mr. EISEN. Yes. That should have been explained in the same manner as Exhibit 2. It is a companion exhibit and therefore No. 3 can either have the same footnote produced on No. 3, or otherwise.

Exam. Gray: It has the same meaning as Exhibit 2?

Mr. EISEN. Yes. It was inadvertently omitted.

By Mr. EISEN:

Q. Have you made a study to determine what your maximum carrying capacity would have been for the year 1940 to all of the ports involved in your previous exhibits if your boats were utilized in their full capacity?

A. Yes; I have made such a study——

Mr. Eisen: May this exhibit be marked for identification?

Exam. Gray: This is identified as Exhibit No. 4.

(Exhibit No. 4, Witness Hewitt, marked for identification.)

Mr. Eisen: The witness will explain it now.

717 A. This exhibit consists of one sheet and is a statement indicating the actual number of automobiles carried on our various vessels for the year 1940. The statement also shows the

number of days the vessels were operated, the number of operating days in the season that the vessels could have operated if we had had sufficient tonnage to fully utilize them, and, in conjunction therewith, the exhibit shows the number of operating days not used because of insufficient tonnage. The exhibit shows the automobile capacity of each vessel per trip and from all of this information we arrive at the conclusion that if the entire unused capacity of the fleet were placed in the Buffalo service, for example, we could have carried in 1940, 87,342 additional automobiles to Buffalo. In the same manner we could have carried 174,685 additional automobiles to the Port of Cleveland. Likewise, we could have carried an additional 29,584 automobiles to the Port of Duluth. These figures, of course, all contemplate that the same number of vessels that we used during 1940 are to be employed and, therefore, the totals do not contemplate the utilization of any other or additional vessels. For the purpose of clarity we have broken the exhibit into two essential divisions, in the first of which we have shown the Nicholson Universal Steamship Company automobile vessels. In 1940 there were a total of 461 boat-days that these six
718 vessels were idle. This really is a staggering figure when it is realized that there were only 252 potential operating days in the season. In other words, there were on an average of two of these automobile vessels tied up each operating day of the season and does not take into account at all our bulk division vessels.

The second division of the exhibit is concerned with the bulk division. The figures that we have obtained in connection with the bulk division are all predicated on twelve days to a trip which is the approximate time required in a round trip Duluth movement. We have not allocated the additional bulker space to the Buffalo or Cleveland services. Had we done so, the total shown for Buffalo and Cleveland would, of course, have been correspondingly increased. Utilization of the bulkers to their full capacity in connection with 40 percent of their operation, which is the average amount of time that they devote to the Duluth service, would have enabled us to carry in connection with these four boats 470 additional automobiles. Utilization of the automobile carriers in the Duluth service only with respect to their unused capacity during 1940 would have enabled us to have carried 29,114 additional automobiles to that port.

In my opinion this exhibit clearly shows that with available equipment, the Nicholson Universal S. S. Company could practically double its present tonnage with its present facilities if it received the freight in a normal manner.

Before leaving the exhibit, I again want to direct atten-
719 tion to the fact that all of the figures are predicated on a

252-day operating season which is a normal period of lake navigation in the automobile trade. For the purpose of clarification, there is one other comment I would like to make in connection with this exhibit and that is that although the total additional bulker capacity shown on the second division of the exhibit actually aggregates 701 automobiles, we have only shown 470 automobiles in the lower division of the exhibit which indicates the unused capacity, because 231 of these automobiles were cars we carried for the MAT Line under interchange agreements filed with the Regulatory Commission.

Q. Now, just for the purpose of clarification, Mr. Hewitt, you mean if you allocated the unused capacity of the fleet in the Buffalo service you would have had that amount of automobiles?

A. That is correct.

Q. You could have carried the additional amount?

A. That is correct.

Q. That if you took the unused capacity and put it in the Cleveland fleet you would have had the amount here shown?

A. That is correct.

Q. You do not mean that you could have carried both Buffalo and Cleveland tonnage?

A. Yes.

Q. If either of the services were used you could have carried so much additional tonnage in that service?

720 A. That's right.

Q. At this time will you please describe the method of operations conducted by the Nicholson Universal Steamship Company, that is, indicate which ships are assigned to which ports?

A. Inasmuch as Nicholson Universal Steamship Company does not maintain any package freight or passenger service we do not operate schedule sailings. Our vessels are dispatched to such ports and with such frequency as the needs of the trade require. We are thus in a position to make available to our customers, at all times, an elastic service. We have always been, and still are, in a position to take care of all needs to any port which might require additional facilities. As a result of our method of operating at any time when there is a sudden accumulation of automobiles moving between ports on any lake, we are in a position to supply that lake with the bulk of our transportation facilities.

Q. Before you further elaborate on that statement, Mr. Hewitt, will you please state whether or not you are personally familiar with the other Lake Lines operating in competition with your line in the transportation of automobiles?

A. Yes.

Q. What other lines are engaged in the transportation of automobiles on the lakes and what ports do they serve?

A. The Great Lakes Transit Corp. serve the ports of Duluth, Milwaukee, Buffalo, Detroit, and Erie and Houghton. The
721 Minnesota Atlantic Transit Company operate in service from Detroit to Duluth.

Q. This is all automobile service?

A. That is correct.

The Detroit and Cleveland Navigation Company operates between the ports of Detroit and Cleveland and Buffalo.

Q. Do you know of your own personal knowledge the number of boats operated by the lines just mentioned by you and their over-all capacity?

A. I not only know that information of my own personal knowledge, but in addition I have discussed this with the involved lake lines and have confirmed my own personal knowledge and thoughts with respect thereto.

Q. Will you give us the benefit thereof?

A. The Great Lakes Transit Corp. operates ten vessels which are available for the transportation of automobiles from Detroit during the season of navigation. These vessels have an over-all automobile-carrying capacity of 783 automobiles. The MAT Line operates the Chambers, Gorman, Willard, King, and Jack.

The first three of these vessels have a spar deck automobile-carrying capacity of 50 automobiles each, and the last two—30 automobiles each. The Chambers, Gorman, and Willard could
722 carry up to 100 additional cars between decks and about 100 in the hold. The King and Jack could carry 40 cars between decks.

The D. & C. operate the Fitch, Mead, Tremaine, and Ingalls which are automobile boats and have an overall carrying capacity of 1,255. In addition to these four boats, the D. & C. also operates six so-called passenger vessels which have a potential automobile-carrying capacity of 520 additional automobiles.

Q. What is your purpose in testifying about lines operating on Lake Erie and to ports other than Duluth?

A. The availability of vessels of competitors to and from other ports lessens the requirement for additional vessel space at ports such as Buffalo, Milwaukee, etc., and makes more vessels or space available for the Detroit-Duluth service. Our operations, as I previously indicated, are elastic and our boats are available at any point, lake or port, that may require them.

Q. You have already indicated, Mr. Hewitt, that your operations are seasonal in character because of climatic conditions on the lakes. There has also been some discussion as to peak and slack movements. Will you please give us a complete picture thereof insofar as your line is affected?

A. Not only is our transportation necessarily confined to seasonal operations, but it is further confined by the peculiarities of the manufacture and transportation of automobiles. When
723 the lakes thaw in the early spring there is not a uniform ice-free lake situation in all years. Some years the lakes are available for navigation earlier than others. Accordingly, in the early part of March dealers begin accumulating their automobiles for shipment in Lake Erie and toward the latter part of March for shipment in Lake Superior. Severe winter conditions which delay opening of navigation will cause a tremendous accumulation of automobiles at Detroit, from which moves, by far, the greatest bulk of automobile traffic. Past experience definitely establishes, however, that navigation to the Port of Cleveland is possible at least two weeks prior to navigation to other ports. This gives us two weeks to clean up the Cleveland accumulation. The opening of the Port of Cleveland also makes possible the shipment through Cleveland of a great deal of tonnage that would normally move through the port of Buffalo and which, upon the opening of Buffalo normally reverts to transportation through Buffalo. So that, as a matter of fact, when weather conditions make it possible for transportation through the Port of Duluth, a very large part of accumulation is cleaned up insofar as Lake Erie is concerned. With the cleaning up on all accumulations we pass the principal peak about the beginning of June because of the slackening of automobile production, which causes a pronounced downward swing in automobile transportation beginning in June, continuing until the bottom is reached in last August.

On this point, in order to more graphically illustrate the
724 situation I am now explaining, I would like to introduce into evidence three exhibits, which are graph indicating in the first the movement of automobiles from Detroit to Duluth for 1939 to 1940; in the second the same information from Detroit to the Port of Cleveland, and the third the same information from the Port of Detroit to the Port of Buffalo.

Mr. SULLIVAN. We have a reference, first, second, and third. That ought to be identified.

Mr. EISEN. Yes. We have the first, Detroit to Duluth.

Exam. GRAY. Off the record.

(Discussion off the record.)

Exam. GRAY. The exhibit now before us will be identified as No. 5.

(Exhibit No. 5, Witness Hewitt, marked for identification.)

Mr. EISEN. Exhibit No. 6 is the graph Detroit to Cleveland.

(Exhibit No. 6, Witness Hewitt, marked for identification.)

Mr. EISEN. Exhibit No. 7 is the graph Detroit to Buffalo.

(Exhibit No. 7, Witness Hewitt, marked for identification.)

Mr. EISEN. First is Duluth, No. 5; second, Cleveland, No. 6; third is Buffalo, No. 7.

The WITNESS. Referring momentarily to the Buffalo ex-
725 hibit which, because of the tremendous volume thereat, more completely portrays the situation I have just been discussing; it can be readily seen that the tremendous drop in automobile transportation caused by the slackening of automobile production commences at the beginning of June and reaches its bottom at the end of August. The same chart indicates that the latter part of July, the entire month of August, and early part of September constitutes the slack season in the automobile business. It is during this slack period that the automobile factories are setting up machinery and otherwise preparing for the change-over in production for the purpose of introducing the new models. During this period practically all of our automobile vessels are tied up at Detroit. Even though the numbers of automobiles being tendered for transportation during this slack season are such as to make the operation of automobile vessels unprofitable, we, nevertheless, fulfill our obligation as common carriers and transport any and all automobiles tendered to us to the respective ports regardless of revenue losses incurred as a result thereof. Obviously a contract carrier would not perform such service. It could, and undoubtedly would, take the cream of the traffic during the peak seasons when it could run with full boat loads and would leave the common carriers the unprofitable and undesirable small lot automobile transportation.

Mr. FOSTER. I move that that answer be stricken as
726 absolutely a conclusion and having no proof to back it up whatever. This conclusion as to what a contract carrier could do is purely a conclusion on the part of the witness.

Mr. EISEN. This is all his opinion, and it is prefixed with that remark, it is his opinion. And he keeps saying he thinks.

Exam. GRAY. Yes; it was offered that way and it is quite clear that it is his opinion, Mr. Foster.

Mr. FOSTER. All right.

The WITNESS. Commencing with the latter part of August the factories start turning out the new models and by the time the end of September is reached there is again a large quantity of automobiles being tendered for transportation on the lakes. This so-called peak season continues to the middle of November when it starts tapering off and by the time the end of November is reached the quantity of automobiles tendered for transportation has dwindled considerably.

It is appropriate to observe at this time that if we compare the graph for Buffalo with the graph for Duluth we will find that in the middle of November when the Buffalo traffic has passed its

peak and is on its downward grade the traffic to Duluth is on its upward grade. As a matter of fact, there was no fall Duluth tonnage in 1939 to talk about.

By Mr. EISEN:

Q. During the peak season of 1940 which according to your graphs indicated that you handled more automobiles
727 than you did in 1939, what was your record with respect to congestion and accumulations of automobiles on your Detroit piers?

A. I would say that our record was exceedingly good. I have prepared an exhibit showing the day-by-day number of automobiles on hand at Detroit destined to Buffalo, Duluth, and Cleveland. This tabulation constitutes my next exhibit.

May that 3-sheet exhibit be identified as Exhibit No. 8?

Exam. GRAY. No. 8.

(Exhibit No. 8, Witness Hewitt, marked for identification.)

By Mr. EISEN:

Q. Do I understand that this exhibit begins with May 1st because your graph indicates that it was not until May 1st that a real peak was reached?

A. That is correct.

Q. Have you any comments that you desire to make in conjunction with this exhibit?

A. This exhibit consists of three sheets. In the first column there is shown the date in 1940. The second column shows the number of automobiles on hand at Detroit at 7:00 A. M. destined to Buffalo. The third column shows the number of automobiles dispatched that day. As indicative of the manner in which the exhibit works, we find that on May 1st at seven o'clock in the
728 morning there were on hand at Detroit six automobiles destined to Buffalo. During the course of that day we received a number of automobiles sufficient to have enabled us to dispatch 345 on May 1st and still have left over on the morning of May 2nd 567 automobiles. No boat was dispatched to Buffalo on May 2nd and on May 3rd we accumulated 835 automobiles——

Mr. SULLIVAN. That is the accumulation of the previous day?

Mr. EISEN. That is the total accumulation on hand at 7:00 a. m.

The WITNESS (continuing): Which in conjunction with the automobiles we received during the course of that day, enabled us to dispatch 1,060 automobiles which resulted in 783 automobiles remaining on our docks at 7:00 a. m. on May 4th.

No boat was dispatched from Detroit on May 4th. On May 5th, 783 automobiles were on hand at Detroit at 7:00 a. m. During the course of that day, we dispatched 441 automobiles. On the morning of May 6th prior to 7:00 a. m. we dispatched another

boat which took out 376 automobiles and cleaned up all Buffalo cars on the dock. With this explanation, I think that the exhibit is self-explanatory other than that I want to indicate that the next two columns show a similar story with respect to Cleveland shipments and the last two columns portray the story as to Duluth.

By Mr. EISEN:

729 Q. Now, Mr. Hewitt, those blank spaces every seventh day, does that indicate Sundays?

A. Yes.

Q. So every seventh day when you have a blank space that indicates Sunday mornings and no automobiles were received during the day.

A. In viewing this exhibit, it should be observed that the ideal operating set-up in the transportation of automobiles on the lakes, particularly with respect to transportation of automobiles on the lakes, particularly with respect to transportation such as that conducted by us, requires that there be accumulated on the dock on any one day as close to 1,000 automobiles as possible. This makes economical the dispatch of two automobile carriers on the one day. Reference to the exhibit indicates that even during the peak seasons we are seldom able to accumulate an early morning quantity aggregating the desirable quantity of 1,000 automobiles.

I also think this exhibit clearly indicates the capacity of our company to handle not only the quantity of automobiles that has been tendered to us in the past, but a quantity greatly in excess thereof. It clearly portrays the difficulties that the common carrier operating in this business on the lakes has in handling the constant fluctuations in tonnage offered, the need to operate during certain periods at a loss and the concurrent need to handle sufficient business during the peak months to offset those slack

730 months. It indicates to some extent that if any quantity of tonnage is taken off our peak seasons and we are confronted with semipeak and slack seasons only, as would be the case if this tonnage were divided among more carriers, that we could not stay in business.

Q. Mr. HEWITT, will you please refer to page 3 of your Exhibit No. 8. I note that around or beginning with the 12th and 13th, that you show an abnormal number of "on hand" automobiles as compared with the previous records. Will you explain why that situation occurred?

A. Well, there has been some testimony, Mr. Eisen, as to the storm conditions that we had on the lakes in November of 1940. And to the best of my recollection this occurred either on the 11th of November or on the 13th, I don't recall at the moment.

Q. Well, was that a severe storm?

A. It was a very severe storm; in fact, I believe it has been classed as one of the largest and worst and most severe storms the lakes ever experienced. There were several lives lost and several vessels lost that certainly caused many heartaches in our organization.

Q. Did that result in tie-ups?

A. Yes; it resulted in the management tying everything up until the storm was over.

Q. Would you say that accounted for the large accumulation of on-hand automobiles as shown on page 3 of your exhibit?

731 A. Yes.

Q. Have you made a study of the movement of automobiles on the lakes for that portion of 1941 up to August 1st of this year as compared with the movement for the corresponding periods of 1938, 1939, 1940?

A. I have.

Q. Have you shown this data on an exhibit?

A. I have in my next exhibit a comparison of the tonnage that the Nicholson Universal Steamship Company carried on the lakes for the period April 1 to August 1, 1941, as compared with the same period for the years 1938, 1939, and 1940.

Mr. EISEN. May that exhibit be identified as No. 9?

Exam. GRAY. No. 9.

(Exhibit No. 9, Witness Hewitt, marked for identification.)

Q. What comments have you to make with respect to this exhibit?

A. This exhibit clearly shows that the total tonnage offered to the Nicholson Universal Steamship Company for transportation during 1941 is substantially in excess of that tendered during preceding years. While the exhibit merely shows the situation with respect to Nicholson Universal Steamship Company, a proportionate increase in tonnage is being experienced by the other lake lines and this exhibit may be considered as representative of the entire picture. Because of the increase in tonnage in 1941,

732 particularly the extent thereof, I firmly believe that in later years we shall look back at 1941 and call it an abnormal year. In my opinion the tremendous increase in automobile production and distribution is due to increased consumer demands caused by desires to beat the defense shutdowns, to beat the defense taxes and other matters of a similar character. I firmly believe that it will be many many years before there is a repetition of a comparable number of automobiles tendered for transportation. However, our record for the abnormal 1941 years is a clear indication of our ability to carry all of the automobile tonnage made available to us.

In this connection I have prepared as my next exhibit a statement showing the day-by-day record at Detroit of Duluth automobiles for the year 1941 up to August 1st.

Mr. EISEN. May the exhibit be distributed which consists of three sheets, and be identified as Exhibit No. 10?

Exam. GRAY. No. 10.

(Exhibit No. 10, Witness Tewitt, marked for identification.)

By Mr. EISEN:

Q. Proceed, Mr. Hewitt.

A. In the first column there is shown the date. In the second column is shown the number of Duluth automobiles on hand at Detroit at 7 o'clock in the morning. The third column shows the number of automobiles dispatched from Detroit. The last column shows the bulkers and capacity thereof which
733 were available on the shown dates but which could not be utilized because of lack of automobile tonnage. In addition to the bulker space being available the "Coralia" was not utilized in any service until April 8th because of insufficient tonnage.

The "Penobscot" made its first voyage on April 28th——

734 By Mr. EISEN:

Q. You said April 28th. Did you hear Mr. Gwatkin's testimony that after April 15 there was no available tonnage on the lakes?

A. I did.

Q. And that boat was tied up not only on April 15th but up to——

A. April 28th.

Q. Proceed.

A. The "Sonoma" on April 20th——

Q. And the "Sonoma" was likewise tied up through the 15th to the 20th?

A. That's right.

Q. What are the reasons for this tie-up?

A. There was no tonnage available to put them in service.

Q. Proceed.

A. The "Woodruff" on April 8th; the "Sultana" made its first trip on April 10th; the "Sonora" on April 9th; the "Cornelius, Jr." on April 10th; the "Cornelius" on April 18th; the "Richardson" on April 13th and the "Resolute" on May 2nd. Obviously before the dates mentioned all of these boats were tied up and available to engage in any service for which sufficient tonnage was available. On July 16th the "Sonoma" with an automobile capacity of 450 cars per trip was tied up because of inadequate tonnage and remained tied up through August 1st. If sufficient tonnage had

been offered, the "Sonoma" could have been utilized in the Duluth service during that period.

735 Q. Have you endeavored to determine to what extent the transportation of automobiles on the lakes will be curtailed in 1942 and subsequent years?

A. The possible curtailment of production of automobiles and the attendant limitation on the quantity thereof that will be transported via the lakes is, of course, a matter of deep concern to us and I have made every possible endeavor to determine what the situation will be, particularly for the next few years. We have been given to understand that the 1942 production will be at least 50 percent less than 1941. We are unable to secure any assurances that the production will not be further curtailed. As a matter of fact, my own personal opinion is that curtailment of automobile production will go below the 50 percent mark.

Q. You mean compared with 1941?

A. Correct.

As a matter of fact some of the distributors of automobiles are already notifying their dealers to expect during 1942 no more than 40 percent of their 1941 consumption.

Q. What is the significance of the statement you have just made?

A. It is of the utmost significance when it is borne in mind that Nicholson Universal Steamship Company is not a package freight hauler. Our transportation is confined entirely to automobiles and of course bulk cargo freight which is not here

736 involved. So that while it may be true that with the curtailment of automobile production the factories will produce other and various defense materials, because of our previous confinement to the carrying of automobiles alone we shall be precluded from handling general merchandise which is the description that will undoubtedly cover the new defense materials. Obviously we could not load on our boats the type of tanks now being manufactured in Detroit nor naval guns or anything of that category.

Q. You mean manufactured by the automobile firms such as Chrysler?

A. I do.

By the same token, the Nicholson Transit Company is seeking rights to transport automobiles only. If the present production is cut down to 50 or 40 percent and that production is divided among the existing lines to the exclusion of the Nicholson Transit Company, we shall still find it difficult to keep our heads above the water. Giving a substantial portion of this business to the Nicholson Transit Company, a newcomer in the field, makes it even more difficult for us to survive.

Q. And is it your opinion that if the Nicholson Transit Company is in the picture as a contract carrier with the attendant advantages of rates that it now possesses, that it will secure the advantage of such freight as is now being tendered?

A. There isn't any question about it.

737 Mr. FOSTER. I move that that question be stricken until there is a tender to show there is an advantage in rates.

Mr. EISEN. I will withdraw the question.

By Mr. EISEN:

Q. In your opinion, if the Nicholson Transit Company is permitted to remain in the picture as a contract carrier, and assuming that the Nicholson Transit Company has a rate advantage, is it your opinion that the Nicholson Transit Company will be given the first preference in the routing of the automobile tonnage?

A. It is.

Mr. FOSTER. Just a moment.

I object to that question on the ground it is a hypothetical question, and not based on the evidence in the record. You may develop that later, but to ask a hypothetical question based on what the facts may or may not develop——

Mr. EISEN. Subsequent witnesses will develop that. If it is necessary for me to call Mr. Hewitt back and waste a lot of time I will be glad to do it. I see no reason why he cannot answer on the assumption.

Exam. GRAY. The answer will be accepted.

Mr. FOSTER. With the understanding that if it is not borne out the question and answer will be stricken?

Mr. EISEN. I will withdraw it if it is not borne out.

By Mr. EISEN:

738 Q. There has been some discussion concerning the use of bulkers in the past. Will you please state for the record why the bulkers were ever utilized?

A. In the past the bulkers were utilized principally as a matter of economics. The bulkers that operated eastbound in the transportation of grain and other bulk commodities had available cargo-carrying space westbound that was never utilized. They found it exceedingly profitable to carry automobiles westbound at very low figures. The quoted figures were so low, as a matter of fact, as to make it uneconomical to operate our own boats in competition therewith. Accordingly, all of the lines, despite the availability of their own equipment, used the bulk facilities. The bulkers were used both during the peak and slack seasons. The use of the bulkers was by no means caused by shortage of carrier equipment. They were used solely because of the

economics of the situation. Now, of course, when I speak of bulkers who performed this operation in the past, I refer to the use of bulkers operated by the various grain and ore and coal carriers operating throughout the entire Great Lakes district, and also the bulkers operated by private industries.

Q. Now, Mr. Hewitt, what lake or lakes were the bulkers prominently used on?

A. Prominently used in Lake Superior. They were also used in Lake Michigan.

Q. Now, when they were using bulkers in Lake Superior, did you at times have your equipment tied up, no shipments?

739 A. Yes.

Q. And as a result you found it cheaper to tie up your own boats and use the bulkers on Lake Superior?

A. That is correct.

Q. And the use of the bulkers was not occasioned by any shortage of equipment?

A. Absolutely not.

Q. And when the bulkers were out of the picture did you then put into your trade your own boats?

A. Yes.

Q. And since the bulkers have been out of the picture have you at any time encountered a situation where you didn't have sufficient equipment to move the tonnage offered?

A. No.

Q. Are you in a position, at any time, to make available additional carrying capacity for the transportation of automobiles on the Great Lakes?

A. Yes; we are.

Four of our present bulkers, namely, the "Penobscot," "Sonora," "Sultana," and the "South Park" were originally used by us exclusively in the automobile-carrying trade. However, because of the inadequate automobile tonnage tendered to us and the lack of need for so many automobile carriers, we converted all four of these boats into bulkers, using them to transport bulk freight

740 east-bound and automobiles west-bound. This conversion had the effect of greatly limiting the vessel capacity of the boats to carry automobiles. We stand ready, able, and willing, at any time that the automobile tonnage so warrants, to reconvert these four boats back into automobile carriers which would increase their capacity substantially; for example, the capacity of the "South Park" would be increased from 60 to 220; the "Penobscot" from 260 to 300; the "Sultana" and "Sonora" from 50 each to 240 each. As a matter of fact, the "Sonora" and "Sultana" in their original automobile-carrying capacity were tied up at our docks in Detroit idle throughout the entire season of 1935 and

1936. It was in 1937 that we converted these boats into bulk carriers.

Here it might be interesting to note that 1937 was an abnormal automobile year; it ranked second in production of automobiles, and yet the tonnage even there did not warrant the retention of these two boats as exclusive automobile carriers.

Q. And is it your statement, Mr. Hewitt, that at any time there is a shortage of automobile-carrying capacity on the lakes, you are ready, able, and willing to convert those four boats back to their original capacity?

A. We are ready.

Q. Those boats were originally available as automobile carriers?

A. Yes.

741 Q. And the insufficient quantity of tonnage made it unprofitable for you to maintain them in that condition?

A. True. They were tied up, idle at docks, and, there is no profit in that.

Q. But you stand ready, able, and willing to increase your carrying capacity by the amounts just shown?

A. That is correct.

Q. Is the automobile-carrying business your principal enterprise.

A. It is.

Q. What has been the effect of operations of the Nicholson Transit Company on the activities of the Nicholson Universal Steamship Company?

A. The Nicholson Transit Company operations have had a very serious and detrimental effect upon our operations. In the first place, although the number of automobiles available for transportation for all lines during 1941 has been greatly in excess of that available during 1940, so far this year we have handled considerably less automobiles through the port of Duluth than we did in 1940.

Q. In other words, Mr. Hewitt, although the total number of automobiles being shipped in 1941 is much greater than the total shipped in 1940, the Nicholson Universal Steamship Company instead of increasing its percentage of the total carried, has

742 actually decreased the percentage of the total carried. Is that your testimony?

A. Through the Port of Duluth; yes.

Q. Through the Port of Duluth.

Proceed.

A. A subsequent witness and exhibit will furnish details with respect to this statement. The activities of the Nicholson Transit Company, particularly through their holding out to transport automobiles at rates substantially lower than those of the common

carriers has caused us to make certain reductions in rates via the Port of Duluth which will also be discussed by a subsequent witness.

A subsequent witness will show that in preceding years practically all of our Duluth tonnage was local port-to-port business. We all know that the revenue on local port-to-port business is much more attractive than the revenue obtained by a line on proportional traffic. As a result of the Nicholson Transit Company's operation and its low port-to-port r[illegible] we have lost a great deal of our local port-to-port traffic. This has had the effect of seriously reducing the average of our revenue obtained by us on the Detroit to Duluth operation.

Q. Just one other question, Mr. Hewitt: In 1941 have you increased the number of automobiles you carried through the Port of Buffalo as compared to 1940?

A. Yes; we have.

Q. Did you increase the number of automobiles that you
743 carried through the Port of Cleveland as compared with 1940?

A. Substantially.

Q. It is only with respect to the Port of Duluth that you have lost tonnage?

A. That is correct.

Q. And is Duluth the only port in which the Nicholson Transit Company operates?

A. Yes.

Q. Now, have you encountered any difficulties because of the increased tonnage that you received through the Ports of Buffalo and Cleveland, in operations?

A. In properly handling the tonnage and dispatch thereof, I would say no.

Mr. EISEN. Cross-examination.

Cross-examination by Mr. FOSTER:

Q. Mr. Hewitt, what is the longest period you have operated between Detroit and Duluth?

A. I cannot tell you. I don't have the dates with me.

Mr. EISEN. You mean in one season?

Mr. FOSTER. In one season. That's right.

The WITNESS. I don't have the figures before me.

By Mr. FOSTER:

Q. Ordinarily, the season does not commerce until around April 15th?

A. It will vary according to the conditions. Sometimes it is April 1st, sometimes May 1st.

744 Q. To Duluth?

A. No; the opening of navigation.

Q. Well, you have never operated to Duluth earlier than April 15th, have you, with automobiles?

A. I don't know definitely, but I would say probably not.

Q. Do you recall ever operating to Duluth with automobiles after December 1st?

A. If my memory serves me correctly, I think we did last year.

Q. You think you did last year?

A. That is, we had vessels in the service, but they probably have left Detroit prior to December 1st.

Q. As a matter of fact, last fall you did send out a notice at about the time of this storm in November that you were not accepting any further automobiles for shipment to the head of the lakes, did you not?

A. Due to storm conditions; yes.

Q. So Exhibit 4, when figured on a basis of 252 days, is wholly inaccurate so far as the operation to Duluth is concerned, is it not?

A. No; I think not, Mr. Foster. After all, there were 252 operating days on the lakes and had there been Duluth tonnage available and had we utilized all those days we could have carried the figures as shown through Duluth and in addition, those that we actually handled.

Q. Well, as a matter of fact, you decided about the mid-
745 dle of November, and 30 days before the normal season closes, that you then were not going to accept any further shipments to Duluth?

A. I would like to qualify that and say the elements decided it. It was something wholly unusual.

Q. But on the basis of the elements you did conclude that?

A. Yes.

Q. And not on these graphs which you show here disclose any transportation beyond December 8th—just a moment. Here is one December 10th. And on the graph to Duluth on the movement of your automobiles on the graph that you offer here as Exhibit 5, during both 1939 and 1940 you show your operation as commencing on April 30th—no, April 1st. You show shipments only during the months of April, May, June, July, August, September, October, November.

A. That is correct.

Q. So on your shipments there, you have never operated, since 1939, in any event, prior to the first of April, after November 30th, so far as your Duluth movement is concerned.

A. Well, again, I don't have the records available, Mr. Foster, but if my memory serves me correctly we did operate beyond April 30th last year.

Q. To Duluth?
A. To Duluth.
Q. In the transportation of automobiles?
746 A. Yes.
Q. Well, your graph here just shows transportation up to November 30th?
A. I think I can correct that. Our last departure for Duluth of 1940 was on the 25th of November.
Q. Was on the 25th of November. And normally it takes you about three days to run to Duluth, at the most?
A. Yes. So when I say we were operating after the first, it was on the return from that.
Q. The "Cornelius" and the "Cornelius Jr." were operated last year as bulk vessels?
A. Correct.
Q. And operated to points on Lake Michigan, points in Green Bay?
A. Yes.
Q. So under their normal operations as bulk carriers you cannot conceivably figure out what your capacity would have been in Duluth service when the boats were not available for that service?
A. They were available, Mr. Foster. In fact, in making a study of our records we arrived at a basis actually, from our records, from our arrivals and departures in the Duluth service, of about 40 percent time, in season.
Q. But you wouldn't operate your bulk boats up there just to carry automobiles on deck, would you?
747 A. That is a future question. It is a little difficult to say at this time what we would do. It is personally our bread and butter, and we have, in the past.
Q. You wouldn't operate your bulk vessels to Duluth with just the top deck, without any prospect of return cargo?
A. We have operated our vessels to Duluth with cargo on just the top decks, and no return loads.
Q. But not on your own vessels?
A. Well, it is difficult to say, Mr. Foster. We have sent our own automobile vessels to Duluth with perhaps 50 or 75 or a hundred automobiles without any prospect of a return load.
Q. On your automobile boats?
A. Yes.
Q. Well, you don't have any return loads for those?
A. That is true.
Q. I understand some your exhibits show that up until this year you had a considerable movement of automobiles to Green Bay;

but in your 1941 figures there is no movement at all to Green Bay. Have you discontinued that service?

A. The volume is so small that it is rather hopeless to attempt to continue with the port.

Q. It is about 25 percent of what your Duluth was, is it not?

A. Approximately.

Q. So even as a common carrier when the run becomes unprofitable you just cancel out your tariffs and get off that run.

748 Is that so?

A. No, we have not canceled out our tariffs on any port.

Q. What did you do in connection with the Green Bay situation?

A. I believe there was an embargo placed on it, but I am not certain.

Q. Just placed an embargo on it. In other words, you are no longer running service to Green Bay, are you?

A. No. We are maintaining service to Greey Bay through the Port of Milwaukee.

Q. Which means that the people of Green Bay have to drive their cars or arrange their own transportation from Milwaukee?

A. They do that in any case.

Q. So a common carrier when he finds he cannot operate profitably does what any other reasonable business man will do, he cancels the service. Isn't that so?

A. I don't agree with that.

Q. But you did do it this year on Green Bay?

A. We have not, so-called, abandoned the port. We are providing service to Green Bay dealers through the Port of Milwaukee.

Q. But if the people in Green Bay wanted to get the advantage of your former Green Bay rates, in view of the embargo they simply just cannot get that, they have to ship through Milwaukee or pay the rates by truck or through other lines.

Mr. EISEN. Well, is the rate through Milwaukee higher?

749 Mr. FOSTER. Well, the record doesn't show.

Mr. EISEN. You said it was higher.

By Mr. FOSTER:

Q. I will ask Mr. Hewitt.

A. I am afraid I cannot say without looking at a tariff. I don't recall it.

Q. You don't recall what your Green Bay-Milwaukee rates were?

A. No.

Q. Nor what the rate is from Milwaukee up to Green Bay?

A. From Milwaukee to Green Bay?

Q. Yes.

A. No; I don't.

Q. And do you know what service the customers you formerly served are now using to get these cars from Milwaukee to Green Bay?

A. I do not know in every case. I believe some of them are using truckaway, driveaway.

Q. Now, you spoke of reducing certain of your rates to Duluth on account of this Nicholson competition, so-called. Just what was the nature of this reduction?

Mr. EISEN. Mr. Examiner, the witness already testified that a subsequent witness would have exhibits and go into detail with regard to that.

Exam. GRAY. I think we can dispense with the question at this time.

Mr. FOSTER. Are the other witnesses going into that?

750 Mr. EISEN. Oh, yes.

By Mr. FOSTER.

Q. Well, do you know whether or not, Mr. Hewitt, that after the bulkers had been eliminated, except those that you have under charter and owned, whether or not all of the common carriers to Duluth, even in view of the prospect that this was going to be a very large year, did all increase their rates for the 1941 business by approximately $2 per automobile over their last year's rates?

A. I don't think I can testify for the other common carriers, Mr. Foster.

Q. But did your company?

A. I understand from my traffic department that there has been some fluctuation in rates through Duluth. Just what changes have been involved, why, I think I would rather leave to others.

Q. Your traffic men can testify as to that?

A. Yes.

Q. Now back in 1935 and '36 when the "Sultana" and the "Sonora" were lying idle, you then had available to you these bulkers to handle these automobiles to Duluth?

A. So I understand. That was prior to my being in Detroit, but as closely as I have been able to ascertain from the records, I would say that is true.

Q. And in 1936 you were not even operating to Duluth, were you?

Mr. EISEN. Mr. Examiner, I don't see the relevancy of

751 what happened in '32, '33, '34.

Mr. FOSTER. Mr. Eisen went into this.

Mr. EISEN. I am objecting to anything prior to the grandfather date, or prior to a reasonable time, say 1937. I don't see any relevancy as to the issue of public convenience at the present time, or in the future, as to what happened in '32, '33, or '34, or any such years.

Exam. GRAY. No. It is rather remote.

Mr. FOSTER. Mr. Hewitt has testified, Mr. Examiner, that he had two boats, the "Sonora" and the "Sultana" lying idle with nothing in 1935 and 1936. Now, I want to show that he was not even operating to Duluth in 1935 and 1936, and, Mr. Eisen brought that up.

Exam. GRAY. Well, don't go beyond that period.

Mr. FOSTER. All right. We will go into '35 and '36.

By Mr. FOSTER:

Q. Was your company operating into Duluth in '35 and '36?

A. As I recall, no.

Mr. EISEN. Are you sure of that, Mr. Hewitt?

The WITNESS. I say as I recall. I am not certain of it; no.

By Mr. FOSTER:

Q. In 1937 when you did convert the "Sonora" and the "Sultana" into bulk vessels, you then had available to you this exceedingly low rate given to you by the operators of these bulk boats?

752 A. That's right.

Q. And what was the capacity of the "Sonora" and the "Sultana" as automobile boats?

A. I would like to refer to my papers. That is as of the "Sultana" and the "Sonora"?

Q. Yes. As automobile boats.

A. I am quite certain it is between 300 and 325 cars, Mr. Foster.

Q. I can tell you it is around 250.

A. Is it?

Mr. ELDRED: Mr. Examiner, I am sure the Commission is very encouraging and optimistic, to say the least, to have four hearings assigned the same day.

By Mr. FOSTER:

Q. Mr. Hewitt, have you transported any automobiles on the "Resolute"?

A. I think not.

Q. Now, do you know whether under your insurance you would be permitted to transport automobiles to the head of the lakes on a barge?

A. I have been advised by our insurance department that we may do so.

Q. That you may do so?

A. Yes. That insurance coverage has been provided.

Q. But she has no means of loading cars below decks?

A. No.

753 Q. It would be just the number of cars, 35, she would carry on the top deck?

A. That's right.

Q. Now, the "Resolute" and the "Richardson" and the two Cornelius boats and the "South Park" were all vessels which you have under charter. Are they not?

A. That is correct.

Q. And the charters on none of those vessels have been renewed for 1942, have they?

A. No.

Q. So your testimony now relates to your present capacity?

A. That is correct.

Q. Rather than to your potential capacity?

A. That is correct.

Q. Yes.

Now, you testified that on the automobile business that if it was available, that you would reconvert the "South Park," the "Sultana," the "Sonora" and the "Penobscott." I mean with the present bulk commodity rates as you have enjoyed this summer you certainly would not have converted any of those boats into automobile boats to run to Duluth, at the present rates, as compared with your bulk commodities?

A. Well, I don't know, Mr. Foster. Our business has been made on one basis, the automobile business, and if we are going to survive in it we must provide facilities to take care of it.

754 That is the policy of the company itself.

Q. But it was the attractive rate on bulk commodities that caused you to convert the "South Park" and the "Penobscot" so as to have them available for that service?

A. Well, it was with the idea rather than have the equipment lie idle, and get no return on it, it was mandatory that we put them in some sort of enterprise.

Q. There wasn't any doubt in your mind but what those boats could be used in the automobile field again as soon as the '42 models came out, was there?

A. May I ask you to repeat that?

Q. I say, was there any doubt in your mind at all that both the "South Park" and the "Penobscot" could be used in the automobile transportation with the coming out of the 1942 models?

A. If I understand you correctly; no.

Q. And it was for that reason that you left the elevators in on the "South Park" so that you could make her available for the use of automobiles, continue her as available?

A. Yes.

Q. And it was for that reason you left the between-decks in on the "Penobscot"?

A. That is correct.

Q. And both of these boats were converted during the customary dull period or shutdown in the automobile factories
755 when everybody engaged in the transportation of automobiles have ships lying at the docks?

A. That is when the work was done; yes.

Q. And in considering the lost time as outlined in your Exhibit 4, that is on the basis of continuous operation of 252 days on all of those ships. Is that right?

A. The exhibit is made up on that basis; yes.

Q. Now, since you have been connected with the company, has there ever been a time when there was a considerable number of your ships tied up for a considerable time during the summer months due to a change in models?

A. There has never been a time but what we have been faced with idle ship time created by a loss of tonnage. It has never come to us in any other way.

Q. Yes. And there have been times, and there were times in both '39 and '40 where all of your ships engaged in the transportation of automobiles were operating virtually at their capacity?

A. There are peak periods in which our vessels are operating to what we call a comfortable capacity.

Q. Yes.

Now, can you tell us just what time the "Crescent City" lost last year as a result of this seasonal shut down which is a very part of the automobile industry?

A. I am unable to do that now.

756 Q. And could you do that in the case of the "Coralia"?

A. Not with what I have here.

Q. You have nothing here to tell just what time was lost on any of these ships due to the seasonal character of the automobile industry?

A. I do not have that with me.

Q. And have you anything available here to tell us just how much time any of these ships lost during the season of 1940 as a result of breakdowns or having to be pulled into the docks for miscellaneous repairs, which you practically always encounter on any ship during the full season of navigation?

A. Well, we are bound to run into some of that. We try very hard, of course, to see that these vessels are so fitted out in the spring that it will not occur during the operating sesaon.

I have no reference here to which I could definitely break it down to the number of days that they were operated.

Q. And in having Exhibit No. 4 prepared, no consideration was given to that factor at all. Is that right?

A. No.

Mr. EISEN. Mr. Hewitt, just look at the number of operating days, 190. Wasn't six weeks taken out of there?

The WITNESS. I was thinking of our operating vessels. That is true in connection with our bulk operations, and which is reflected on this very statement itself.

757 Q. And you took into consideration all lay-ups in 1940 in this exhibit?

Mr. FOSTER. Just a moment.

Mr. EISEN. Well, I don't want the record to be confused.

Mr. FOSTER. But I don't want it to be, either. That relates to the Duluth service, Mr. Eisen, the Duluth service for 190 days, as I understand it.

Mr. EISEN. No; she operated for 190 days on the lakes. She was tied up six weeks. Mr. Hewitt testified that he found that 40 percent of the time that any of these boats operated was in the Duluth service, predicated on his 1940 service. So he didn't take the 190 days he took 40 percent of the available days she was in actual operation. That gave you seventy-six days that the "Cornelius" actually operated in 1940 into the Port of Duluth; took into consideration all of the lay-ups and the time she spent in other ports and in other operations.

By Mr. FOSTER:

Q. Now, Mr. Hewitt it would be wholly impossible for you to operate all of your boats exclusively between Detroit and Buffalo, and Detroit and Cleveland, would it not?

I mean, with that carrying capacity you simply would not pull them out of the bulk trade and operate them exclusively between Detroit and Cleveland and Detroit and Buffalo with their limited carrying capacity.

758 A. No. As a matter of fact, they are in that trade to some extent now, and they are not utilized.

Q. They are not utilized?

A. No.

Mr. EISEN. You understand the Buffalo figures are not shown in the Cleveland figures.

Mr. FOSTER. No.

By Mr. FOSTER:

Q. Now, do you know when the "Coralia," "Penobscot," "Crescent City"—have you the day on which any of those vessels came out in 1940?

A. I cannot tell you the date assigned to each one of the vessels individually, Mr. Foster. I don't have—if you permit me, I can refer to my testimony. I think it is in here.

Mr. EISEN. Off the record.

(Discussion off the record.)

The WITNESS: Then I don't have the data available; no.

By Mr. FOSTER:

Q. Now, do you have that data as to when those vessels laid up last fall?

A. We naturally have that data, but I do not have it with me.

Q. Yes.

Now, the steamer "South Park" last year did operate 252 days, didn't she?

A. It did.

Q. And that was exclusively between Detroit and Cleveland, was it not?

759 A. No. She traveled between Detroit and Cleveland, Detroit and Buffalo. I am not sure whether she went up the lakes last year or not.

Q. But she opened the season and closed the season. Does that account for her long operating period?

A. I believe she did open and close it. It might have been one of several vessels, but I believe she was the one.

Q. Now do you recall when the season opened in Buffalo in 1940?

A. April 27th.

Mr. EISEN. It is shown on the exhibit Mr. Foster.

By Mr. FOSTER:

Q. And do you remember the last sailing to Buffalo in 1940?

A. I don't.

Q. You don't remember the last sailing?

A. No. Generally speaking, we try to continue as last as, oh, the 10th or 12th of December.

Mr. ELDRED. Mr. Examiner, I don't want to preclude any examination, but I don't see that it makes any difference in this application whether the season opened on the 15th of May or the 10th of April, or when it closed. I don't see that that is the issue here.

Mr. EISEN. We have shown all that on the exhibit.

Mr. FOSTER. Have you read the exhibit, Mr. Eldred?

Mr. ELDRED. I have read it, but I don't see that it makes
760 any difference.

Mr. EISEN. Obviously, all of these boats didn't start operating when the lake opened, and that is the whole purpose of the exhibits, but the opening of the lake is shown on the bottom of the exhibit, and I don't see why it is not clear.

Mr. FOSTER. But the automobiles you could handle is based on the running season between Detroit and Cleveland.

Mr. EISEN. The witness explained all that, Mr. Examiner. He said if you figure 252 days, even though some ports were not open, he figures 252 days a reasonable time for all of the ports. I don't see what more can be gotten from the witness on that.

Mr. FOSTER. I am trying to find out why he thinks that.

Mr. EISEN. You can argue that on brief, but don't argue with the witness here.

By Mr. FOSTER:

Q. Well, obviously, Mr. Hewitt, you couldn't have operated to either Buffalo or Duluth last year 252 days. Isn't that correct?

Mr. EISEN. I object, Mr. Examiner, on the grounds of the objection I have just made.

Mr. FOSTER. Let the witness answer.

Mr. EISEN. I object to the question. It has all been answered in the record.

Mr. FOSTER. Do you want to stipulate that?

Mr. EISEN. Sure I will stipulate it is all in there. My
761 only objection is that it is repetition.

Mr. FOSTER. Would you read the question, Mr. Reporter?

(Question read.)

Mr. EISEN. I submit, Mr. Examiner, the witness testified he took 252 days, which was computed as the basis of the navigation to any one port. We concede that the 252 is not the exact figure for any one port, but that is the average. The tied-up boats could have been thrown into the Cleveland operation as the opening date, as the witness testified, and used to clean up the backload and then gone into the other ports in full.

Now, that is the witness' testimony.

Now, if Mr. Foster does not agree with his conclusions, Mr. Foster can argue it on brief. Why ask him over and over again? He has already answered it.

Exam. GRAY. I think it need not be repeated any further.

Mr. FOSTER. I have not asked that question of this witness previously. Mr. Eisen has tried to answer that question in his own way every time that I asked it, but this witness has not been asked that question before. And it goes to the admissibility of these exhibits which have been marked but not offered.

Mr. EISEN. Would it be proper to ask the Reporter to refer back to how he got his 252 figure?

Mr. ELDRED. I think it has all been stated clearly.

762 Mr. FOSTER. Have the Reporter go back and find it. I don't recall asking that question before.

Do you have any objection to the witness answering it now?

Mr. EISEN. Will you explain how your got the 252 days once again, Mr. Hewitt?

The WITNESS. 252 days, Mr. Foster, is the actual number of days in which the "South Park" operated during the season of 1940, and, while the other vessels as shown here did not operate that number of days, we considered that it was a potentiality under which they could have operated.

By Mr. FOSTER:

Q. Which would have meant that your whole fleet would have had to operate to Cleveland. Is that right? That being the only port to which they could then operate.

A. In order to get the 252 days, yes; in order to clean up that accumulation and make them available for other ports.

Q. Yes. And have you the dock facilities at either Cleveland or Detroit to handle that full capacity sailing?

A. Oh, I think we have; yes.

Q. You think you could handle it in and out of your Cleveland and Detroit docks, the full capacity of all of your vessels?

A. I do.

Q. But you have never had anywhere approaching that number of automobiles; is that right?

A. Oh, yes, in the spring of the year, year, we have accumulated them in excess of that capacity.

763 Mr. EISEN. You mean before the lakes opened?

The WITNESS. Yes.

By Mr. FOSTER:

Q. But is that for shipment to Cleveland?

A. To Cleveland and Buffalo.

Q. Cleveland and Buffalo. There never was in your experience, even by all the carriers, that number of automobiles being shipped to Cleveland for 3 weeks solid?

A. It has never been solicited that way.

Q. That is more than the total shipments to Cleveland during the whole season, is it not?

A. I don't follow you.

Q. You say that your capacity is over 2,000 cars a day operating all these fleets, and, if that were so, you could take either 1938 or 1939, and if you operated them that length of time it would take

are of all the cars that were shipped to Cleveland during the whole season, would it not?

A. No.

Q. That is, together with the capacity of the B. & C., which you also given?

A. It was in the year 1938 when there were no automobiles manufactured, possibly, but certainly not in 1940, and certainly not in 1941.

Mr. EISEN. Isn't that the whole basis of your protest? That you never got that tonnage?

The WITNESS. Yes.

Mr. EISEN. If you had it you wouldn't be in here complaining, or protesting.

By Mr. FOSTER:

Q. The Nicholson Transit Company were not operating to Duluth in 1938, were they?

A. Yes.

Mr. EISEN. Wait a minute. Nicholson Transit. I am going to object to testimony in the record on that. The Nicholson Transit witness covered that.

Mr. FOSTER. Automobiles. We are going to show the whole scope of our operation, Mr. Eisen.

Mr. EISEN. Wait a minute. It was agreed that this portion of the hearing was automobiles.

Mr. FOSTER. That is right. That is true.

By Mr. FOSTER:

Q. But in 1938 during the whole season you carried only 2,335 automobiles to Duluth. Is that right?

A. Not according to my figures, Mr. Foster.

Mr. EISEN. 1938?

By Mr. FOSTER:

Q. 1938, Mr. Hewit.

A. 3,923.

Mr. SULLIVAN. What number are you looking at? What exhibit?

Mr. EISEN. Exhibit 1 shows the total for 1938. Exhibit 9 shows the totals up to August 1st. That is what is confusing you, Mr. Foster.

The WITNESS. For the year 1938.

Mr. FOSTER. That's right.

By Mr. FOSTER:

Q. How many cars did you handle to Duluth?

A. 3,923 for the whole season.

Mr. EISEN. I object to his reading what is in the exhibit.

Mr. FOSTER. He protests that his business is dropping off because of competition from this company. I want to show for the whole season he carried less, up to first of October.

Mr. EISEN. Well, I object to your reading the exhibits. Go ahead.

By Mr. FOSTER:

Q. That is true, is it?

A. That we handled 3,900 cars to Duluth in 1938?

Q. Through the whole season.

A. Yes.

Q. And in 1939 4,088?

A. A little over 4,000.

Q. And in 1940 8,910?

A. That is correct.

Q. You have no assurance whatever that if the Nicholson Transit Company had not commenced operating to Duluth, that you would have gotten any of this business which they got; have you?

Mr. EISEN. I object; it is irrelevant. This isn't a trial of Nicholson Universal; it is a trial of Nicholson Transit.

766 Mr. FOSTER. It isn't a trial of anybody, Mr. Eisen. At least I didn't know it was.

Mr. EISEN. It is a formal proceeding.

Exam. GRAY. The witness may answer.

The WITNESS. Will you repeat the question, Mr. Foster?

Mr. FOSTER. Will you read the question?

(Question read.)

A. I think it stands to reason, Mr. Foster, that if you continue to add other carriers into any port, that you are going to have a loss of business.

By Mr. FOSTER:

Q. Well, the number of automobiles which Nicholson Transit Company have carried to Duluth in 1941 so far is only about half of what the Western Transit carried in 1940. Isn't that so?

A. I don't have the Western Transit figures here to check.

Q. Do you have the Western Transit figures here any place?

Mr. EISEN. A Western Transit employee will be on the stand as a subsequent witness.

Mr. FOSTER. I don't know all of those things.

By Mr. FOSTER:

Q. You don't know how many cars they carried during 1940. Is that right, Mr. Hewitt?

A. No; I don't.

Q. But Nicholson Transit has been added as a carrier, and Western Transit has discontinued. That is the actual situation, isn't it?

767 A. I don't think it is the actual situation. Western transit is still alive.

Q. But are not transporting any automobiles?

A. Well, there isn't any difference in their picture today than there was a year ago.

Q. There isn't any difference?

A. No.

Mr. EISEN. You ought to go into that, I think, with the Western Transit man. He will show they are in existence today in the same way they have always been. If you will just wait for the Western Transit man he will go into that.

Exam. GRAY. I think it is advisable, Mr. Foster.

Mr. SULLIVAN. No. 2 is a composite exhibit including Western Transit.

Mr. EISEN. Yes. But he asked for Western Transit figures alone.

By Mr. FOSTER:

Q. Mr. Hewitt, you spoke of the "King" and "Jack" of the MAT line in your testimony. Isn't it a fact that neither of those boats are any longer in the Duluth run?

A. I have not been so advised by the MAT Line.

Q. You have not been so advised?

A. No.

Q. You don't know whether they are still in operation yet on that run?

A. I have been so advised by them that they are.

768 Q. That they are still in operation?

A. Yes.

Mr. EISEN. Under what date?

The WITNESS. September 2d.

Mr. EISEN. 1941?

The WITNESS. Yes.

By Mr. FOSTER:

Q. Now, your Exhibit No. 4 is prepared on the theory that you have a season of 252 days and that with continuous operations including Sundays and with the automobiles, even though the factories are on five-day production, delivered in such a manner so as to permit each and every one of those vessels to be operated without any possible delay from any cause whatever. Is that right?

Mr. ELDRED. Now, Mr. Examiner, I don't mind this, but it seems to me we are wasting an awful lot of time. The witness stated

clearly what he stated of the 252 days. That certainly is clear, I think, to everybody. I don't know why we have to go back into that again.

Mr. FOSTER. I asked the witness whether he made any allowances——

Mr. EISEN. Why don't you ask him if he dispatches boats on Sundays.

Do you?

The WITNESS. Certainly.

Mr. EISEN. That is the answer.

769 Mr. FOSTER. That is not the answer.

Mr. ELDRED. Well, let us get the 252 days out of the picture and go through with the thing.

By Mr. FOSTER:

Q. Mr. Hewitt, how often do you have to clean boilers on the various ships during the season of navigation?

A. Oh, I think an operating man could answer that question. I am not certain. I have no knowledge.

Q. You mean that you have allowed no deduction for time taken out for cleaning boilers on these ships. Is that right?

Mr. EISEN. Well, I object to that until you develop first whether any time is taken out.

Mr. FOSTER. I am asking if he made any allowances.

Mr. EISEN. I object until you determine whether there is any such thing as taking off time.

Don't ask the question until you establish that basis.

Mr. FOSTER. They are offering an exhibit here, Mr. Examiner, and I am simply trying to find out how they base what they mean by this exhibit.

Mr. EISEN. Mr. Examiner, my objection is a very fundamental precept of law. If there isn't any time taken off to clean boilers, and the witness says no, it immediately creates the impression that time is taken off.

Why don't they determine that first, whether there is any time taken off? You have to establish a basis before you ask a question.

770 Exam. GRAY. Let us find out whether the witness has considered that in preparing the exhibit.

By Mr. FOSTER:

Q. Mr. Hewitt, you do know that your vessels are delayed during the operating season for the cleaning of boilers, do you not?

A. Yes.

Q. But you cannot tell us, because that is in charge of the operating end of the fleet, how much time is lost each season for that purpose. Is that right?

A. That is correct.

Q. But in preparing this exhibit here you have not taken into consideration the loss of any time for that purpose. Is that right?

A. We have arrived at the 252-day figure, which might well be 260 some years, it might be 240, but during the year 1940, on which this exhibit was made up, it actually was 252 days on which the "South Park" operated.

I cannot tell you whether she had her boilers blown or not. If so, she had it done in that period of time.

Mr. EISEN. Mr. Examiner, in order to save time, I am willing to stipulate that, regardless of whether or not due allowance has been made, the exhibit can be cut down 10 percent. In other words, we are willing to take off 10 percent of the days. In other words, tie up the vessels 46 days. I am quite sure Mr. Foster will agree that cleaning boilers does not tie up 10 percent.

771

If that will satisfy Mr. Foster, I think I am more than generous. It still has not been developed that these things have not been eliminated, but I am still willing to stipulate 46 days, 8,000-some automobiles taken off the total to Buffalo; 17,000 off the 174,000 total to Cleveland, and 3,000 automobiles taken off the total to Duluth; and let the picture show the results.

Mr. FOSTER. Mr. Eisen is very generous, but apparently the first trip that was made to Buffalo was April 27th, which would take off 23 days at the beginning of the season, and maybe more at the end of the season.

Mr. EISEN. No. The witness testified the season was opened April 4th. He testified there wasn't sufficient tonnage. He testified that both Cleveland and Buffalo tonnage is routed through Cleveland prior to the opening of Buffalo.

Exam. GRAY. Well, I am not very much in favor of your generous offer, Mr. Eisen. The figures have apparently been prepared from figures of record, and if they have been I don't want them changed by an arbitrary giving up of 10 percent, and the examination, I believe, is in order to find out whether those facts have been considered in arriving at the days.

Mr. EISEN. I think the witness has testified that he has taken into consideration lay-up time. He testified specifically in relation to the vessel "Cornelius," six weeks.

772

Exam. GRAY. And at this time I am in favor of adjourning until tomorrow.

Mr. SULLIVAN. I second it.

Mr. EISEN. Mr. Examiner, I am strenuously opposing that because for the last hour or so Mr. Foster has been reiterating and reiterating his questions. I think he has about concluded his

cross-examination. I think it is very unfair to have to bring Mr. Hewitt back tomorrow for a very limited cross-examination.

Mr. FOSTER. I can say this, Mr. Examiner, Mr. Hewitt has said there are various other witnesses who are coming on to testify who can testify as to these various matters.

Mr. EISEN. As to rates.

Mr. FOSTER. How about the other matters?

Mr. EISEN. I don't have an operating man here, but there will be a Western Transit man, there will be a rate man, and there will be a financial man.

Mr. FOSTER. Will there be anyone here with available records as to the first arrival at Buffalo, the first arrival at Duluth, and the last arrival at Buffalo and Duluth?

Mr. EISEN. You have in these exhibits, if you will analyze them, the complete details as to the first departures at all ports, and as to the last arrivals at all ports.

Mr. FOSTER. I am talking about 1940.

Mr. EISEN. Yes, sir. It is even in more detail in 1940
773 in this exhibit. Wait until I get the number of it.

No. 8. No. 8 gives the date that each automobile was dispatched right through to the last date of the season. If you look at sheet 3 you will find that the last automobile dispatched to Buffalo was November 29th; that the last boat dispatched to Cleveland was on the 30th, and so forth. And I think you have the knowledge of the time in transit, you can add that to it and determine when they arrived at the ports. We have given you everything you have asked for right in the exhibits if you will only analyze them.

Now, what other data do you want, Mr. Foster?

Mr. FOSTER. If you are satisfied that you can get that exhibit in, I don't care for any further data?

Mr. EISEN. I am satisfied I can get the exhibit in.

Mr. FOSTER. All right.

Mr. EISEN. Are you finished with your cross?

Mr. FOSTER. No; I am not finished. He said he wants to adjourn.

Mr. EISEN. You have further questions?

Mr. FOSTER. Yes; we have further questions.

Mr. EISEN. Well, go ahead.

I object to the adjournment, Mr. Examiner.

Mr. SULLIVAN. Is Mr. Hewitt going to be in town tomorrow?

Mr. EISEN. Well, Mr. Foster has been on a fishing expedition for half an hour.

774 Mr. SULLIVAN. Well, on behalf of the Reporter I ask that we adjourn.

Mr. FOSTER. I second the motion.

Exam. GRAY. We will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 5:35 o'clock p. m., September 9, 1941, the hearing was adjourned.)

775 PROCEEDINGS

Exam. GRAY. Mr. Foster, are you ready to resume cross-examination?

Mr. FOSTER. Yes.

F. L. HEWITT, Jr., resumed the stand and testified further as folows;

Cross-examination (continued) by Mr. FOSTER.

Q. Mr. Hewitt, on your Exhibit 1 you show that in April of 1940 you moved only 837 cars to Buffalo while you moved 10,000 to Cleveland, 1,628 to Duluth, 393 to Green Bay, and 1,311 to Milwaukee.

In 1940 Buffalo did not open up until quite late in April?

A. As I recall; yes.

Q. Yes. Now, on this Exhibit 1 it is pretty clear that you have about four months out of each season where you have a heavy movement.

A. True.

Q. And that it tapers off. Now, in August, 1940, you moved no cars to Green Bay, only 127 to Duluth, 271 to Milwaukee, 912 to Cleveland, and 308 to Buffalo. Now any one of your ships could have handled all of those cars, could it not?

A. You are discussing 1940?

Q. Yes.

776 A. Handle it over what period.

Q. The cars you moved in August, to all ports, could easily have been handled by one boat, could it not?

Mr. ELDRED. In what period?

Mr. FOSTER. During August of 1940.

The WITNESS. I don't think that they could have handled them all during the period; no. I am considering the different ports involved, and distances between them.

By Mr. FOSTER:

Q. You would have had about one ship to Buffalo?

A. Yes.

Q. And with your big "Woodruff" you would have had about two trips to Cleveland?

A. Yes.

Q. And you did operate your boats on a Milwaukee-Duluth run where they go to Milwaukee and into Duluth?

A. Well, as I said yesterday, it is an elastic service, there are no schedules to which it is possible to work it out that way.

Q. You recently sent a boat on that particular voyage to Milwaukee and Duluth?

A. It has been done.

Q. And it takes you about 24 hours to make the turn-around to Cleveland?

A. Approximately.

777 Q. And about 48 hours to Buffalo?

A. Approximately.

Q. That is about three days. And how long does it take you to make this run to Milwaukee and Duluth and return?

A. I haven't checked the logs, and I wouldn't want to say as to the definite time.

Q. It wouldn't take over 10 days?

A. No.

Q. So one of your boats could have taken care of all the business you had in August 1940, in less than half a month on the normal schedule of one of these ships?

A. Possibly.

Q. In August of 1940 with the Nicholson Transit Company not in the picture at all, all of your vessels, because of the inherent nature of the automobile industry, would have been lying at the dock at any event. Is that not so?

A. It is one of the manifest difficulties under which we are operating; that is, the lack of tonnage, and that is a fact.

Mr. EISEN. That is all of your vessels.

Mr. FOSTER. With the exception of this one.

Mr. EISEN. Under this conjecture, you mean?

Mr. FOSTER. No; I mean under the actual figures shown on the exhibit.

By Mr. EISEN:

Q. Do you understand the question? You say all of your
778 vessels except one were tied up in the month of August. He is talking about actualities now.

A. I didn't say that was actually the case, Mr. Foster. It might be possible to work it out that way. There are so many factors involved it is a little difficult to say.

Exam. GRAY. Well, do you know whether or not all of your vessels except one were tied up and idle during the month of August?

The WITNESS. I do not know that for a fact, Mr. Examiner. It is quite possible. There might have been one additional boat in service during the month of August.

I am referring to automobile boats. We have five or six of our vessels that were in service available during the month of August.

By Mr. FOSTER:

Q. Last year you did move to Duluth a considerable number of cars on outside bulkers which you did not have under charter, or which you did not own. Isn't that right?

A. I am confused as to what you consider a considerable number, Mr. Foster.

Q. Put it this way: Do you know how many outside vessels you shipped cars to Duluth on in 1940?

A. That is, the vessels not owned or chartered by Nicholson?

Q. Yes, sir.

A. I could guess at it.

Q. Give us your best recollection of it.

779 A. I would say 500, 600, or 700 cars.

Q. That you shipped on outside boats?

A. Over the season?

Q. Yes.

A. Yes.

Q. And you haven't shipped any in that manner this year?

A. No.

Q. Now, turning to your Exhibit 4, the 252 days which you have for the "South Park" covers from April 4 to December 12, does it not?

A. Yes.

Q. Going back to Exhibit 1, there were no cars at all moved to either Duluth, Green Bay, or Milwaukee from the first to the twelfth of December 1940; is that right?

A. That is correct.

Q. Now, Mr. Hewitt, do you attribute the decrease in your percentage of gain on the Duluth run to the Nicholson Transit operation?

A. I do.

Q. Now, in 1940 up until August 1st where you had moved to Green Bay and Milwaukee a total of 4,908 cars, this year you have moved to Milwaukee only 3,571 cars. There you have had an actual decrease of approximately 25 percent.

Mr. EISEN. How do you mean, decrease in Milwaukee?

Mr. FOSTER. No; Green Bay and Milwaukee combined.

780 The WITNESS. That's right.

Mr. EISEN. That is presuming that all the Green Bay cars now go through Milwaukee?

Mr. FOSTER. No; it isn't assuming anything. Now, you let me——

Mr. EISEN. I object to the form of the question. The exhibit shows an increase in Milwaukee——

Exam. GRAY. Off the record.

(Discussion off the record.)

Mr. FOSTER. Just strike the question, Mr. Reporter.

By Mr. FOSTER:

Q. Did you testify yesterday, Mr. Hewitt, that you were serving Green Bay now through Milwaukee?

A. Yes.

Q. Now, turning to Exhibit 9, up until August 1, 1940, how many cars did you ship to Green Bay?

A. May I have the question reread?

(Question read.)

A. 1,294.

Q. And how many to Milwaukee?

A. 3,614.

Q. Or a total of 4,908. Is that right?

A. Yes.

Q. Now, what has been your total shipments to Milwaukee in that same period during 1941?

A. 3,571.

781 Q. Or a decrease of approximately 25 percent?

A. Approximately.

Q. Now, you do not have the competition of the Nicholson Transit Company on that run; do you?

A. I am not certain of that. I think possibly in many ways we have.

Mr. EISEN. Well, explain your answer.

By Mr. FOSTER:

Q. They don't operate to either one of those ports, do they?

A. No. Nevertheless, I think they are a competitive factor in that many of these dealers in the territory tributary to the ports possibly have taken some of those cars through the Port of Duluth rather than through Green Bay or Milwaukee.

Q. You have no knowledge of that?

A. Only as I have been able to develop from solicitation reports as may come in, things of that sort, in our traffic department.

Q. Now, did the steamer "Woodruff" lose any time in the month of May this year, as a result of lack of business?

A. I don't think I can answer that question with the records I have available in front of me.

Q. Have you made a study, or have you had a study made as to whether or not the "Crescent City," "Coralia," "Penobscot," "Sonora," "Woodruff," or "South Park" lost any time during May of 1941 as a result of lack of business?

782 A. I have not only as to time lost over the entire season.

Q. And that was the season of 1941?

A. That was the season of 1940.

Q. 1940. So you have had actually no study made or have made no study yourself as to the operation of your ships during May and June and July, the heavy peak movement of automobiles, during the season of 1941?

A. I have not broken it down into any weekly or bi-monthly or monthly periods.

Mr. EISEN. Did you testify as to what tie-ups you had in July in certain ports in 1941? I thought I heard you testify as to that.

The WITNESS. It is quite possible. There were tie-ups as I recall all summer of these automobile vessels, but I don't recall at the moment just which ones they were.

By Mr. FOSTER:

Q. That was in July 1941?

A. May I have the copy of my testimony, Mr. Reporter?

Mr. EISEN. That was where you were testifying, I think, as to the bulkers that were available. I will tell you what exhibit it was. In connection with your Exhibit 10, your last exhibit.

Off the record.

(Discussion off the record.)

The WITNESS. I find that at least one of the automobile vessels, namely, the "Sonoma," was tied up because of lack of

783 tonnage in the middle of July.

By Mr. FOSTER:

Q. In the middle of July?

A. Yes.

Q. And did she run continuously from the time she went out until that time?

A. That is, from the time she was placed in operation?

Q. In the spring.

A. I believe so.

Q. And all of your automobile boats from the time they came out in the spring ran continuously until the cars started dropping off due to the seasonal change. Is that right?

A. Pretty generally; yes.

Q. Now, in connection with your Exhibit 10, which covers your Duluth service, it starts out on April 1st and runs down to August 2nd, showing the daily "on hand" automobiles. In preparing that exhibit did you have the date as to how long the 610 cars had been on hand on April 23 when there was a shipment of 400 cars?

A. No. This on-hand report is a report which we have of shipments on hand as of 7 a. m. each day, and there is no breakdown

therein as to whether they have been on hand 12 hours or 2 days or anything of that sort.

Mr. EISEN. Can't you give that from your exhibit, Mr. Hewitt? Does your exhibit show on the 22d you had 18 cars?

The WITNESS. It would indicate on there that we had no
784 shipments other than the 21st or 22nd of the month, or for four or five days, at the most.

By Mr. FOSTER:

Q. It doesn't show that you shipped the cars as they came in, this exhibit doesn't, does it?

A. That is pretty much the general practice, Mr. Foster.

Q. Well, you didn't have any investigation made or didn't make any investigation yourself to determine whether that was done on this Duluth movement, did you, Mr. Hewitt?

A. There has never been any such investigation made, Mr. Foster. It is the practice to ship all of the older cars first.

Q. What boats did you operate to Duluth, what automobiles did you operate to Duluth at the commencement of the season up until the——

A. I don't recall definitely. As I say, our service is elastic and we are apt to discard any one of them, depending on the conditions that exist at the time.

Q. You don't recall what boats you operated?

A. No, I don't.

Q. Now, in taking care of your Cleveland business, including the Ford Motor Company account, is it necessary that you operate two boats to Cleveland during the peak movement?

A. Well, that again, Mr. Foster, is dependent a great deal on the local conditions as they exist at the moment, and the volume involved as to whether a large boat can carry it or
785 whether it requires two small boats. It very often works out both ways.

Q. Well, up to August 1st you moved 35,000 cars to Cleveland?

A. In 1940?

Q. In 1941.

Mr. EISEN. What exhibit is that?

Mr. FOSTER. Exhibit 9.

A. Yes.

Q. Do you recall, Mr. Hewitt, just what boats you did operate? You operated the "South Park."

A. I believe the "South Park," the "Woodruff," "Crescent City," "Coralia."

Q. And you moved 50,000 cars to Buffalo during the same period?

A. Yes.

Q. Now, you did operate almost continuously on Lake Erie four of your automobile boats, did you not?

A. I think that is true.

Q. Now, did there come a time during the present season of navigation, Mr. Hewitt, where all of your automobile boats were out of the automobile service due to lack of business?

A. No.

Q. Did there come a time——

A. To the best of my knowledge; no. We have always maintained a service, thinking it was necessary, rather mandatory upon us, as common carriers.

786 Q. Did there come a time during this present summer, despite the heavy movement of automobiles, where you were only operating one automobile boat on Lake Erie?

A. It might have been quite possible that the tonnage available did not warrant any more than that, and that is something that we didn't do—I am not certain at the moment—it is quite possible.

Q. Yes. By the very nature of the production of automobiles with this shutdown of the factories where they absolutely cease making automobiles during the summer months for their change-over, it would never be possible to keep all of your automobile boats operating 252 days, would it, Mr. Hewitt?

A. I think it is quite possible, Mr. Foster. We are headed into the most uncertain times. If my recollection is correct, many years ago the manufacturers changed over in the middle of the production periods during different periods of the year, which meant that we had a fairly consistent season throughout. They may possibly go back to that when this emergency is over. I can visualize the possibility of operating pretty generally over an entire operating season. It is possible to develop itself that way.

Q. Your Exhibits 5, 6, and 7, which are the graphs showing the peaks and valleys of the movement to Duluth, Cleveland, and Buffalo, during 1939 and '40, show that about half of the time during the season of navigation from April to November that at

787 least half of your tonnage is not being used and there is nothing for it to do; do they not?

A. That is correct, on the present manner of handling this tonnage, or in the manner in which it is offered, as the graphs portray the actual picture, according to facts.

Q. Yes. Now, as far as you know none of your automobile boats lost any time whatever due to lack of business from the time they were fitted out this spring until about July 15th when one of your boats went to the dock, due to lack of business; is that right?

Mr. ELDRED. You mean boats used exclusively for that purpose, not the combination boats?

Mr. FOSTER. That's right.

Mr. EISEN. What do you mean by that, that they were operating every day back and forth?

Mr. FOSTER. That's right.

A. I am not certain that they have lost no time, Mr. Foster. I don't feel that I could testify that they were operating every day, or that they have not lost any time. Generally speaking, they were fairly well occupied.

By Mr. FOSTER:

Q. Fairly well occupied?

A. Yes.

Q. They might have laid over from Saturday night until Monday on account of the five-day production, but you
788 didn't lay them up because you knew they would be going out Monday night. Is that right?

A. That is true.

Q. Now, when do you expect that your automobile boats will be back in operation?

A. Under the normal routine?

Q. Yes, with the new models coming out.

Mr. EISEN. Aren't they in operation? What do you mean by operation?

Mr. FOSTER. I mean in service.

Mr. EISEN. Well, they are available, are they not?

The WITNESS. They are available and they are in service, to the extent that they are needed at the present time.

By Mr. FOSTER:

Q. I mean, if they are lying at the docks now for lack of business it is because the new 1942 models are not in production. Is that not so?

A. Well, looking at it strictly from a shipping point of view, it is because the tonnage has not been offered to us.

Q. Yes. And you fully anticipate that when all of the companies get in production on their 1942 models that that tonnage will be offered and all of your boats will get back in service?

A. We are certainly hopeful.

Q. How many are in service now, Mr. Hewitt?

A. Having been away a week, I don't know.

789 Q. Do you know how many were in service when you left?

A. I believe two, as I recall. I am not certain of that. You are speaking strictly of automobile boats?

Q. Yes. And did you make any investigation before you left as to how soon others would be in service; that is, the conditions with the factories?

A. We have attempted to. We get many promises. Quite generally they are not fulfilled, but I should say within the immediate future, why, the new models should come along.

Q. And you know that during the month of August nobody moved any automobiles to Duluth, to speak of, don't you, 1941?

Mr. EISEN. Have you any figures on the other lines? That is the question.

The WITNESS. The month of August?

By Mr. FOSTER:

Q. Yes.

A. 1941?

Q. Yes.

A. No, I don't have.

Q. Do you know how many cars you moved to Duluth during August of 1941?

A. I haven't that tabulated.

Q. You haven't that tabulated?

A. No. To the best of my recollection, we dispatched, oh, several vessels, but I don't recall the amounts involved.

Q. Were those bulkers or regular automobile boats?

790 A. I believe both.

Q. You believe both during August?

A. Yes.

Q. And did you send the "Penobscot" that left on this Milwaukee-Duluth run—was the first boat you sent up in September?

A. Latter part of August or first part of September, if I recall, the "Penobscot" started.

Q. You do know, Mr. Hewitt, that the lack of business during the month of August, and during the early part of September was due primarily to the change in models of the automobiles rather than that some other carriers were getting them from you, do you not?

A. Well, our graphs certainly indicate that this business is full of peaks and valleys, and that is one of the valley periods.

Q. Turning now to your Exhibit 10, can you go down through that exhibit, Mr. Hewitt, and tell us how many voyages you make to Duluth with regular automobile carriers?

A. I would say without checking on the records that there were from this exhibit 16 trips.

Q. And you can tell that there were 16 trips by the number of cars carried?

A. That is what I am basing it on.

Q. Knowing that you cannot carry the number of cars

791 on the deck of a bulker?

A. That is correct.

Q. In other words, for the four months you made approximately a trip a week?

Mr. EISEN. With an automobile carrier.

Mr. FOSTER. With an automobile carrier.

A. Yes.

By Mr. FOSTER:

Q. Now, can you tell from this exhibit what boats you dispatched?

A. You mean the name of the vessels?

Q. Yes.

A. No.

Mr. EISEN. Mr. Examiner, I would like to have a ruling whether we have to go into all the details such as the number of boats dispatched, the names of the boats.

Obviously we have the facilities. We haven't contended that Nicholson Transit or Great Lakes or MAT or any other line has taken any tonnage away from us.

Our picture is that we have here available facilities. Now, they are all depicted here. I don't care who carried it, or what, or where. He has the facilities. And what difference does it make what boat went? A boat went. That is all that counts. And there were boats there idle.

We will be here all day if we go into these irrelevant matters.

792 Exam. GRAY. Well, I doubt if it is absolutely necessary that you get the names of the vessels, is it, Mr. Foster?

Mr. FOSTER. Well, I think it is important. He has testified that all of his automobile boats operated continuously from the time they were fitted out until they started laying them up due to lack of automobiles as a result of the changeover.

It may be very well, as Mr. Eisen says, that they can offer all of these exhibits and just testify that they have this capacity and can handle this business, but I think it is very important for us to show whether Mr. Eisen thinks so or not, that their facilities were taxed.

Mr. EISEN. Well, Mr. Examiner, it still has not been developed that although all of these boats ran, that they carried one automobile or 400 automobiles. Mr. Hewitt hasn't testified that these boats were loaded to capacity. Mr. Foster diligently kept away from that question.

Mr. FOSTER. That is precisely what I am leading up to now, to ascertain whether there was any capacity remaining.

Mr. EISEN. Well, ask him the question. He told you time and time again that he didn't have his 1941 cars or 1941 records here with him.

Now, he has told you that time and time again. Now, if you asked those questions and he has told you he doesn't have it, there isn't any sense in asking him three or four different
793 ways and getting the same answer each time. If he doesn't know in response to your direct inquiry he doesn't know in response to your roundabout inquiry.

Mr. FOSTER. Mr. Examiner, I haven't the slightest idea whether that was an objection addressed to you or an oration, or what it was.

Mr. EISEN. No, I made an objection to you, Mr. Examner, and you asked him a question concerning it.

Exam. GRAY. Now, Mr. Foster, I don't want to preclude you from producing and showing anything that you regard as essential to your case.

Go ahead.

By Mr. FOSTER:

Q. You have no knowledge, then, Mr. Hewitt, nor have made no investigation in connection with your Exhibit 10 so as to be able to tell us at this time which of your automobile carriers made these various trips to Duluth in the commencement of the season until August 1st. Is that right?

A. That information could be secured, but I have nothing available at the moment; no data with me to be able to answer that question, Mr. Foster.

Q. Well, in connection with your Exhibit 10 and the figures which you have set out on that, you wouldn't be in a position to tell us whether there was any available space on any of these automobile boats which you dispatched to Duluth, not knowing which of your boats were dispatched. Is that so?

794 A. I wouldn't want to testify along those lines; that is true.

Q. I mean, you have no knowledge of it?

A. No.

Q. And not knowing which boats were dispatched as far as you can tell at this time, each of those boats might have been loaded to its complete capacity?

Mr. EISEN. Mr. Hewitt, can't you accommodate Mr. Foster by telling him how much each of your boats could have carried and the quantity shown?

The WITNESS. Well, answering Mr. Foster's direct question, these amounts here would indicate that at least some of these vessels departed without capacity loads, but again I cannot tell you to what extent they were short, not knowing or having available here the names of those vessels that the cars were actually carried on.

Mr. EISEN. Let me——

Mr. FOSTER. I am cross-examining the witness.

Mr. EISEN. I am just trying to help you out.

Mr. FOSTER. I think I will get along fine without your assistance, I actually do.

Mr. EISEN. Go ahead.

(By Mr. FOSTER):

Q. There is a further factor, isn't there, Mr. Hewitt, that the "South Park" on certain sized automobiles could not transport more than 205?

A. That is correct. And by the same token, most any of
795 the automobile vessels could carry in excess of 240.

Q. Of the larger boats?

A. Yes.

Mr. FOSTER. I think that is all.

Redirect examination by Mr. EISEN:

Q. Now, will you answer Mr. Foster's question, Mr. Hewitt?

Mr. FOSTER. Did I ask some question that was not answered? I thought he answered.

Mr. EISEN. You were satisfied with it but I am going to give you the rest of it. I am going to have him answer it in redirect.

By Mr. EISEN:

Q. Will you refer to your Exhibit No. 10 and tell us which of your boats could have carried 427 automobiles in one load? That is the boat that was dispatched on April 19th.

A. The "Woodruff" or the "Sonoma" could have carried 427 automobiles.

Q. What was the carrying capacity of those vessels?

A. 450

Q. So that when those vessels went out they were 23 automobiles short?

Mr. FOSTER. Just a moment. He has testified he couldn't testify to that.

Mr. EISEN. All right. I developed, Mr. Foster, there
796 were only two boats that could carry that quantity. You asked the question and now I am having it answered for you. He said there were only two boats that could have carried 427 automobiles.

By Mr. EISEN:

Q. And those two boats were the——

A. "Woodruff" and "Sonoma."

Q. And the capacity of those vessels is 450 automobiles; is it?

A. That is correct.

Q. And then those boats must have gone out with 23 automobiles short.

Now, look for your automobiles dispatched on April 27th.

Mr. FOSTER. Are you testifying or asking a question?

Mr. EISEN. Is that an objection?

Mr. FOSTER. I object to you orating to the witness and then leading up to the question.

Mr. EISEN. That is all you have been doing all along, asking leading questions. We want the facts in the record.

Mr. FOSTER. Mr. Eisen, you always ask leading questions on cross-examination.

Mr. EISEN. Are you overruling my ability to fulfill the gaps in Mr. Foster's cross-examination, or may I continue?

Exam. GRAY. You are entitled to redirect examination.

Mr. FOSTER. I object to the form and the fact that it is a leading question.

797 By Mr. EISEN:

Q. Will you refer to your dispatch of April 27th and tell us which of your automobile boats could have carried 400 automobiles?

A. Again the "Woodruff" or the "Sonoma."

Q. The "Woodruff" or the "Sonoma;" now, what was the carrying capacity of those vessels?

A. 450.

Q. Now, Mr. Hewitt, do you know these facts concerning which you are testifying of your own knowledge, or am I leading you into answering them?

A. I have answered the questions from my own knowledge.

Q. So that those boats actually left with 50 automobiles less than their capacity for either one that was used on that sailing?

A. For either one that was used on that sailing; that is correct.

Q. And have you any other vessel besides those two that could have accommodated 400 automobiles in one sailing?

A. No.

Q. So that if one sailing took care of that 400 automobiles it must have been either one of the two boats that you mentioned? Sailing of April 27th, 400 automobiles.

A. I would say so; yes.

Q. Now, refer to your sailing on May 3, 359 automobiles. Which of your boats could have accommodated 359 automobiles?

798 A. Well, as I recall, the "Woodruff," the "Sonoma," the "Coralia," and the "Crescent City."

Q. Now, would the 359 be the full capacity of each one of those boats?

A. No.

Q. How about the sailing of May 11th, 358 automobiles?

A. The same thing would apply.

Q. Will you refer then to this 16 automobile vessels that you estimated had been dispatched, and tell us which one of those quantities would indicate to you that the full capacity of the vessel was used, if any.

A. I don't think I can answer that question, Mr. Eisen, not knowing the name of the vessel that departed.

Q. Well, according to the three specific vessels that you testified to, there were additional facilities on those boats? You see the dispatch of April 19th, the dispatch of April 22nd, and the dispatch of May 2nd.

A. If those boats were utilized, that is true.

Q. Well, they would have to be utilized if you were going to answer 16 in answer to Mr. Foster's question, 16 automobile boats utilized.

A. I would assume so; yes.

Q. Now, then, I believe Mr. Foster had you state that all four of your automobile boats were used on Lake Erie during April, May, and June of this year. Do you recall so testifying, agreeing with Mr. Foster when he testified, and had you agree to it?

799

A. I think it was quite probable.

Q. Now, will you refer to your Exhibit 10 and look at your dispatches there and see if you want to change that answer.

A. My reason for saying quite probably, I have no log sheets here.

Q. I understand that, Mr. Hewitt, but after reviewing the boats dispatched according to your Exhibit 10, would you say that all of your automobile boats were used exclusively on Lake Erie during this period?

Mr. FOSTER. Mr. Eisen, I said four of them.

The WITNESS. Now, my reason in saying probably, I am quite certain that some of those automobile boats were not used exclusively on Lake Erie during the entire period.

By Mr. EISEN:

Q. How many automobile boats did you operate this year?

A. The "Woodruff," "Sonoma," "Crescent City"——

Q. Well you only have four automobile boats, and when Mr. Foster asked you if four of your automobile boats were used exclusively on Lake Erie, he asked you if all of your automobile boats were used exclusively on Lake Erie.

Mr. FOSTER. I didn't ask him that.

Mr. EISEN. It will show.

By Mr. EISEN:

800 Q. Now, your Exhibit 10 will show if your automobile boats were used on Lake Superior as well.

A. Well, that is a fact, of course.

Q. Now, refer to your Exhibit No. 1. Refer to those figures for 1940 that Mr. Foster referred to. Have you any way of knowing that if similar tonnage were available this year, and Nicholson Transit Company were in operation, that you would be able to get even the quantity shown in your exhibit?

A. I have no way of determining that; no.

Q. Have you any facts upon which to base on opinion that you would not be able to get all of that tonnage if that was the only amount available and Nicholson Transit were in operation?

A. Well, the fact alone that you add additional competitors in any field, you are going to lose a certain amount of tonnage. That seems to be the most reasonable conclusion.

Q. So even during your slack season, if you had an additional competitor your picture would be worse that it actually is?

A. During a slack period or a period—peak period.

Q. Now, will you refer to your month of October 1940. That showed some 29,000 automobiles, roughly, here, handled, did it not?

A. The mathematics are correct; yes.

Q. Well, if you had the capacity to handle 29,000 automobiles during October, do you know any reason why you wouldn't have a similar capacity during April of the same year?

801 A. No.

Q. Do you know any reason why you wouldn't have a similar capacity during May of the same year?

A. No.

Q. Or June of the same year?

A. No.

Q. Or July?

A. No.

Q. Or August?

A. No.

Q. Or September?

A. No.

Q. Or October?

A. No.

Q. Or November?

A. No.

Q. So if you deducted the amounts shown——

Mr. FOSTER. You forgot December.

Mr. EISEN. I am trying to portray a fair picture, not pull any tricks.

By Mr. EISEN:

So that if you owned the amounts shown in your exhibit, to carry 29,000, the October carrying capacity, that would be a clear indication, would if not, of your additional ability, or additional unused capacity for 1940?

A. I think so.

802 Q. Now, with respect to these bulkers that you have under charter, Mr. Hewitt, do you have any present ideas of not renewing those charters for 1942?

A. Oh, there hasn't been too much considering along those lines as yet. It is a litttle early in the year for it. We anticipate operating those vessels this coming year. It is a little difficult to say whether we will or not at the present moment.

Q. In other words, if there is sufficient tonnage, if in your estimation there will be sufficient tonnage, you will operate them?

A. We hope to.

Q. But you have no fear of refusal to renew those options at the present moment?

Mr. FOSTER. Options?

Mr. EISEN. Or charters.

A. At the present moment; no.

By Mr. EISEN:

Q. Now, Mr. Hewitt, when you reconverted the "Penobscott" and "South Park," was that done after the bulkers had gone out of existence?

A. You are referring now to the bulkers of private industry?

Q. Those owned and operated by other than Nicholson.

A. The bulkers were converted after that operation ceased.

Q. So that even after the bulkers went out of business you still felt that you had surplus automobile-carrying capacity?

803 A. It is rather evident.

Q. Yes; I think it is. Now, Mr. Hewitt, refer to your Exhibit No. 4, please.

A. Yes.

Q. Now, the first line, number of days operated. Will you explain what you mean by number of days operated?

A. I mean by that the number of days that the vessel actually was operated; that is, duly manned or crewed with steam up and available for the movement of tonnage.

Q. Does that necessarily mean the days that the boat is actually running between the ports?

A. No; not necessarily. She could have been tied up because of lack of tonnage or some boiler work for 15 or 16 hours, or something of that sort.

Q. So that when you show the number of days operating, you are including the days the boat is in service, even including your lay-up time for minor repairs?

A. That is correct.

Q. And those days the boat is not used because of unavailable tonnage dispatched on that particular day?

A. That is true.

Q. So as a matter of fact you have been very liberal in your exhibit by not showing actual days the boat was running between the ports?

A. We think so.

804 Q. If you had shown the number of days the boat was actually running between the ports would that probably be substantially less than the number you show?

A. The 252?

Q. And the 197 and the 105, and so forth.

A. I think it would; right straight down.

Q. So that if you had shown only the days the boats were actually running rather than using the phrase "in operation," as you described it, the number of running days not utilized would be in excess of 461 days, would it not?

A. That is true.

Q. So that rather than exaggerating the picture you have reduced it and shown it in a very modest way?

A. That is correct.

Q. And if you had shown it literally, the number of days running, what influence would that have had?

A. An increase.

Q. So that you have taken into consideration lay-up days for minor repairs and things like that in your figures?

A. Yes.

Q. Now, refer to your Exhibit No. 2, Mr. Hewitt. Have you made any check to determine whether the number of automobiles moving or tendered for movement through the Port of Milwaukee to all lines in 1941 was greater or less than the amount ten-

805 dered to all lake lines in 1940? Did you hear the question?

A. I would like to have it repeated.

(Question read.)

A. I have for that period up to August 1st.

Q. Through Milwaukee?

A. If I understand your question correctly.

Q. Exhibit No. 9 is the Nicholson Universal Steamship Company. Now, I ask you if you have a study of the tonnage carried by all lake lines.

A. Oh, I am sorry. Through the Port of Milwaukee?

Q. Through the Port of Milwaukee.

A. No; I don't.

Q. You haven't made a study.

A. No.

Q. So, not having made the study, you don't know, do you, Mr. Hewitt, whether the 1941 tonnage carried by your company through Milwaukee is a greater or lesser percentage of the total amount of automobiles tendered, 1941 over 1940, do you?

A. I do not know that.

Q. You do not know.

Before you could determine whether 1941 showed a reduction or an increase over 1940, would you not have to have in your possession the figures of the total movement for both years?

Mr. FOSTER. Mr. Examiner, I cannot see where this is material.

806 Mr. EISEN. Mr. Foster tried, Mr. Examiner, to show through cross-examination that the 1941 tonnage carried by the Nicholson Universal through Milwaukee was less than the tonnage in 1940.

Mr. FOSTER. You showed that yourself on your own exhibit.

Mr. EISEN. We haven't shown anything of the kind. I just asked the witness whether that was a percentage increase on the total or a percentage reduction on the total, without having the figures, and the witness said no.

Mr. Foster opened his question by saying, "You have shown that 1941 tonnages were greater than 1940. That was all of the lakes. There was no showing as to the total Milwaukee. Now he says the exhibit shows Milwaukee was a reduction, or less than 1940.

Well, that may be a reduction in actual figures as shown by the exhibit, but the witness' testimony, and I think Mr. Foster's testimony is it is the proportionate reduction predicated on the entire movement.

Mr. FOSTER. No. I was talking about the Nicholson-Universal.

Mr. EISEN. That might have been 40 percent of the total. And in 1941 while only 35 percent is shown, that might have been 80 or 90 percent of the total.

Mr. FOSTER. That isn't material.

Mr. EISEN. It certainly is material. The burden is on
807 you to show the figures.

By Mr. EISEN:

Q. Now, refer to your Exhibit No. 1, Mr. Hewitt, please.

Now, in operations going through the Port of Green Bay in previous years will you please tell us approximately what percent of the tonnage was destined locally to Green Bay and what percentage of it moved beyond Green Bay to points outside of Green Bay locally?

A. Going back to previous years, and with reference to Green Bay business, I would like to qualify my statement to the extent that it is based entirely on what I have been able to develop from our records in Detroit.

My recollection is that, oh, probably 80 percent of the business moving through Green Bay——

Mr. FOSTER. Mr. Examiner, I am going to have to object. The records are the best evidence.

Mr. EISEN. Does the Commission want all these manifests and files? We are perfectly willing to give them to you. I have never heard of the Commission refusing to take testimony under oath of what the records show. Those records are open to Mr. Foster or anybody else.

Exam. GRAY. I think——

Mr. FOSTER. I object to Mr. Hewitt testifying as to what proportion of those cars moved locally and what portion of them moved beyond Green Bay, unless he does have actual
808 knowledge of those facts.

Exam. GRAY. He has just testified that he has examined his own records.

Mr. FOSTER. If he has examined his own records and has those figures and testifies to his own knowledge from the examination of those records, I have no objection.

Mr. EISEN. Will you read Mr. Hewitt's opening statement?

(Answer read.)

Mr. FOSTER. Now, he has qualified it and said "to the best of his recollection."

Mr. EISEN. He has qualified it to show that he does not know this independently of his records. I have instructed all of my witnesses to lean over backwards to be fair. He is not saying he knows it of his own knowledge independent of records when he doesn't.

I think the witness should be commended.

Exam. GRAY. The witness may answer.

The WITNESS. It would develop, Mr. Foster, that approximately 80 percent of that business moving through Green Bay is destined to points beyond the port itself.

By Mr. EISEN:

Q. And those records indicate that the movement beyond Green Bay took place via what facilities?

A. Oh——

Q. I am not asking you for proportions.

A. Rail, driveaway, various modes of transportation.

809 Q. Now, with respect to the through rail rates that previously applied through the Port of Green Bay, were those rates canceled or were the routings changed to have those same rates apply via a different port?

A. I cannot answer it from a rate point of view.

Q. Now, Mr. Hewitt, you are in actual and close touch with operations of the automobiles on the lakes, Lake Erie and Lake Superior, every day operating? Are you not?

A. That is true.

Q. You knowledge of the operations on the lakes is knowledge obtained in the last two or three years, is it not?

A. As to the operations throughout the entire Great Lakes district?

Q. Yes, sir.

A. That is correct.

Q. Now, I am going to ask you an opinion question, and I am asking you to predicate it on the knowledge that you have obtained in the last few years, not knowledge that you have obtained in 1928 and 1929, since when conditions have changed, but on your present knowledge, not as a solicitor of automobiles, but as an operating executive, as a man in charge of transportation of the largest automobile carriers on the Great Lakes. Have you made a study and have you determined whether or not there is need

for any additional automobile capacity on the Lakes, over

810 and above the capacities of the existing lines, namely, the Nicholson Universal Steamship Comany, the MAT, the D. & C., and the Great Lakes Transit?

A. This study has been made, and considerable discussion had on it, and unquestionably, in my opinion, there is no requirement for additional carriers in the carriage of automobiles on the Great Lakes.

Mr. Eisen. That's all.

Re-cross-examination by Mr. Foster:

Q. Mr. Hewitt, when you spoke of the capacity of the "Woodruff" and the "Sonoma" as 450 cars, that means 450 of the smallest cars that you transport, does it not?

A. Not necessarily. It may be 460. As a matter of fact, I think we can produce some loads this year where we have had 460 cars. It is dependent, however, on the size and the number of small cars that are mixed together with large cars.

Q. Yes.

A. And again the capacity of the vessel is cut down to some extent as to the total number of cars placed aboard by the number of large Fruehoff trailers that you might load, so the capacity of 450 cars is a moderate capacity. I think the average will be a little better than that over an operating season.

Q. When you speak of a vehicle, that includes a truck or Plymouth or Chevrolet, or anything?

A. Or Cadillac.

811 Q. And you have no actual knowledge because you were there and saw it, or any check you have made of your records, as to what the shipments to Duluth, when you ship any less than 450, consisted of, have you?

A. I don't know as I got your question, Mr. Foster.

Q. I say, you have no personal knowledge either from a check that you have made or because you were there and observed it, that you did in fact have additional capacity on those two boats that went to Duluth early in season?

A. I don't have that—those facts before me at the moment. To the best of my recollection, I don't—I do recall vessels having departed for Duluth, automobile vessels, short of the full capacity.

In other words, we could have carried additional cars and dispatched them light.

Q. You do recall such instances?

A. I do; yes.

Q. But you cannot tell us when those instances were?

A. I cannot.

Mr. EISEN. Can you tell us when you wired Mr. Holt and told him you had additional capacity, and solicited his automobiles?

The WITNESS. I don't recall the dates, but it was early in the operating season, possibly just prior to the opening, and I

812 think we wired him on more than one occasion. Undoubtedly that went along for several weeks after the opening of navigation.

Q. That you had space on departing boats?

A. Yes.

Q. Available to him?

A. Yes.

By Mr. FOSTER:

Q. Did you tell him how much space?

A. We told him we had plenty of unused space and could help him out.

Q. Could you help him out?

A. Oh, yes. We didn't send such wires except with all sincerity, Mr. Foster.

Q. I know that.

A. Whatever he tendered to us we would have been able to move.

Q. Well, you know as a matter of fact, Mr. Hewitt, that it takes considerable time to clear the cars through the factory, and so forth, and Mr. Holt simply couldn't wire Chrysler to send Nicholson Universal a hundred automobiles because they had a boat leaving at six?

A. I have seen that work out a good many times. It is possible.

Q. To Duluth?

A. To any ports.

Q. Where one particular dealer can get a hundred cars by just wiring in?

813 A. It has been done in many cases.

Q. Under the present conditions is it done?

A. You mean the defense period?

Q. I mean have you seen that done this season.

A. I have seen it done on 50 or 60 automobiles this season. I know that it has happened on many occasions in the past for a hundred or better.

Q. Except for the general statement, Mr. Hewitt, you have no records with you, or any independent knowledge as to the additional space that you had on any particular boat going to Duluth at any time?

A. That is correct.

Q. Including the times that you wired Mr. Holt?

A. That is correct. I would like to say that at the time we wired Mr. Holt, however, we had several vessels tied up at the Detroit docks that were idle and had he chosen to give us four or five or seven hundred automobiles we would have moved them.

Q. That was before the boats went out in the spring?

A. Yes; and shortly thereafter, as I recall.

Q. After they once went out and the automobiles really started moving, you didn't have to lay them up again until the change of model. Is that right?

A. Oh, we continually solicited Mr. Holt's account.

Q. As a matter of fact, when you sent these first wires it was at about the time that the Nicholson Transit Company

814 started moving the Holt's cars, was it not?

A. Well, I believe they started their operations in the spring, and that was the normal period for us to be out after additional tonnage; that is correct.

Q. And you have no available data here with you except just the general statement that you could have moved them, as to just what boats would have been used, or just how you would have

transported them Detroit to Duluth, the 4,000-odd cars that were transported by the Nicholson Transit Company?

A. I don't have the data available to name the specific boat to you, Mr. Foster, but there isn't any question in my mind, or I think in anybody else's mind, in either our traffic or operating department but what we could have made movement of the cars.

Q. But despite that very strong feeling, no one in your organization has prepared any data showing the schedule?

A. We have no schedule.

Q. I mean to show that you could actually have moved them. I mean, you have no actual data showing the movement of your ships to show that you could have moved those cars, except the general feeling that if they had made a tender you would have moved them?

Mr. ELDRED. Just a moment.

I think we are going far beyond the scope, in the conjecture. I don't see where there is any duty or reason why this
815 man should sit down and say what steamer could have moved on such and such a date. They have made the statement, and if they want to prove it, let them put on a witness.

Mr. EISEN. Mr. Examiner, the burden of proof is clearly on the applicant. If the applicant feels that in our helping the Commission we are omitting anything he is at perfect liberty to fill it in and present the true picture, which he should have done in the first instance. But I think our testimony and exhibits so far speak for themselves.

Exam. GRAY. I think it would not help your application very much, if any, to know the names of the ships that might have been used.

Mr. FOSTER. What is that?

Exam. GRAY. I think that it is not essential to you.

Mr. FOSTER. Well, Mr. Examiner, they have testified to these general statements. They are a protestant in our case. They also have a complaint case which I understand is going to be consolidated. Now, I submit just the general statement that they could move it goes to the weight of their testimony; and I am asking him what the basis of that is, or if he has selected any data or any records to bear out his general opinion.

That is certainly within the scope of cross examination.

Mr. EISEN. I think the question is misleading. We have ten exhibits. We have offered truckloads of supporting data. The exhibits are here. The testimony is here. I don't know
816 what Mr. Foster wants except that he wants us to come in and prove his case. We have factual evidence, something no one of the applicant's witnesses has produced. He has pro-

duced exhibits. He has not said he got the data from newspapers or from sources from which the data is not obtainable, which we shall show in connection with applicant's witnesses.

Mr. FOSTER. Will you read the question?

(Question read.)

Mr. EISEN. There is an objection on the record, Mr. Examiner, of Mr. Eldred and myself.

Exam. GRAY. I will sustain the objection.

Mr. FOSTER. Exception.

The purpose of the question was, I was endeavoring to find out on what this witness bases his opinion.

Exam. GRAY. I think he has established his opinion, Mr. Foster. He has testified that he has prepared these exhibits from the records of his company and is familiar with them.

Mr. FOSTER. None of these exhibits, Mr. Examiner, have anything to do with the questions I have asked, despite Mr. Eisen's long oration.

Mr. EISEN. Mr. Examiner, I think in all fairness the exhibits show the full factual data. If you refer to the exhibits you will get the number of days, the various trips, the number of boats dispatched. Now, if Mr. Foster wants to know the names
817 of the individual boats dispatched, I cannot by any stretch of the imagination determine what difference it makes to determine whether the first boat dispatched was the "Woodruff" or anything else.

Mr. SULLIVAN. Mr. Eisen, the Examiner has ruled with you. Why argue?

Mr. EISEN. But he is continuing the argument.

Mr. SULLIVAN. But the Examiner has not changed his position. Maybe he will if you continue.

Mr. FOSTER. Are you through?

Mr. EISEN. I am through.

Mr. SULLIVAN. Mr. Examiner, shouldn't there be a pause in the day's operations?

Exam. GRAY. Yes. I didn't want to interrupt your cross-examination. If you are not approximately through we will recess. If you are, we will stay here.

Mr. FOSTER. I simply couldn't tell. I may ask another question and Mr. Eisen may talk until noon.

Exam. GRAY. We will recess.

(There was a short recess taken.)

Exam. GRAY. Proceed.

By Mr. FOSTER:

Q. Mr. Hewitt, does your Exhibit 10 truly reflect the number of cars that you might have carried from Detroit to Duluth on your boats which were on that run from April 1st to August 2nd?

A. That is the capacity shown, is it a true reflection of what they could actually car ?

Q. And the available part on the form, the righthand corner. Does that reflect the actual conditions, cars which you could have carried, on your bulkers?

A. Very definitely.

Q. And that is the available space you did have?

A. And which was not utilized:

Q. And which was not utilized.

A. That is correct.

Q. In your Duluth service?

A. On this column in every case these bulkers were dispatched to the Port of Duluth, and it was tonnage which we could have utilized in the Duluth service which was passed up because of inadequate tonnage.

Q. And you did not have a bulker which you might have utilized but which you did not utilize between April 15th and May 19th. Is that so?

A. No. During that period such bulkers as we had that were operating to Duluth were utilized.

Mr. FOSTER. I think that's all.

Mr. EISEN. Off the record.

(Discussion off the record.)

Exam. GRAY. You may be excused temporarily.

(Witness excused.)

819 *Docket No. 28678 and W-732, Exhibit No. 1*

Witness: Hewitt

Statement showing total number of automobiles handled by Nicholson Universal Steamship Company to all ports for years 1938, 1939, and 1940

1938

Month	Buffalo	Cleveland	Duluth	Green Bay	Milwaukee
April	8,149	1,319	909	336	775
May	8,644	1,100	898	411	582
June	4,165	1,037	896	144	301
July	2,823	508	262	91	164
August	74	16	7	10	58
September	3,190	275	347	105	805
October	8,364	1,298	823	330	745
November	14,360	2,951	711	431	1,510
December	1,730	349			
Totals	51,499	8,943	3,923	1,862	4,440
Grand total					70,667

Statement showing total number of automobiles handled by Nicholson Universal Steamship Company to all ports for years 1938, 1939, and 1940—Continued

1939

Month	Buffalo	Cleveland	Duluth	Green Bay	Milwaukee
March		3,265			
April	4,714	6,294	126	605	630
May	11,103	2,378	1,344	433	1,457
June	11,525	2,505	931	228	1,067
July	7,644	1,689	536	82	616
August	735	421	147	22	98
September	10,196	1,924	579	447	1,114
October	7,547	2,605	366	410	861
November	1,660	3,127	39	188	306
December		2,594			21
Totals	55,144	26,692	4,068	2,315	6,232
Grand total					94,471

1940

April	837	10,045	1,628	393	1,341
May	12,779	6,822	2,084	470	1,198
June	9,492	6,580	818	300	837
July	3,667	2,566	374	131	268
August	308	912	127		271
September	6,801	4,043	936	412	891
October	16,828	8,978	1,375	696	1,111
November	14,094	8,677	1,568	460	653
December	1,877	2,268			
Totals	66,683	50,846	8,910	2,832	6,542
Grand total					135,813

820 *Docket No. 28678 and W-732, Exhibit No. 2*

Witness: Hewitt

Statement showing total number of automobiles carried by all lake lines operating out of Detroit to all ports for the year 1938, 1939, and 1940*

	Buffalo, N. Y.	Cleveland, Ohio	Duluth, Minn.	Erie, Pa.	Green Bay, Wis.	Houghton, Mich.	Milwaukee, Wis.	Total
1938	97,751	16,673	16,973	652	1,802	68	6,336	140,315
1939	114,283	50,248	21,067	925	2,315	90	8,244	197,872
1940	145,052	78,237	26,640	1,361	2,832	121	10,324	262,967

*Includes figures of Detroit and Cleveland Navigation Company, Great Lakes Transit Corporation, Minnesota Atlantic Transit Company, Nicholson Universal Steamship Company, Western Transit Company.

821 *Docket No. 28678 and W-732, Exhibit No. 3*

Witness: Hewitt

Statement showing the percentage Nicholson Universal Steamship Company tonnage is of the total handled by all lake lines operating out of Detroit during the years 1938, 1939, and 1940*

	Total tonnage	Nicholson Universal Steamship Company tonnage	Nicholson Universal Steamship Company percentage
1938	140,315	70,667	0.5036
1939	197,872	94,471	.4774
1940	262,967	135,843	.5164

Docket No. 28678 and W 532, Exhibit No. 4

Witness: Hewitt

Statement showing actual and potential operating days for the year 1940, also maximum carrying capacity if vessels were utilized to full capacity

NICHOLSON UNIVERSAL STEAMSHIP COMPANY VESSELS

1940	Crescent City	Coralia	Penobscot	Sonoma	Woodruff	South Park
Number of days operated	141	197	105	162	194	252
Potential operating days	252	252	252	252	252	252
Automobiles actually carried	15,991	32,924	7,765	21,093	27,023	28,413
Number of operating days not utilized	111	55	147	90	58	0
Automobile capacity per trip	365	370	325	450	450	220
Total number of operating days not utilized						461

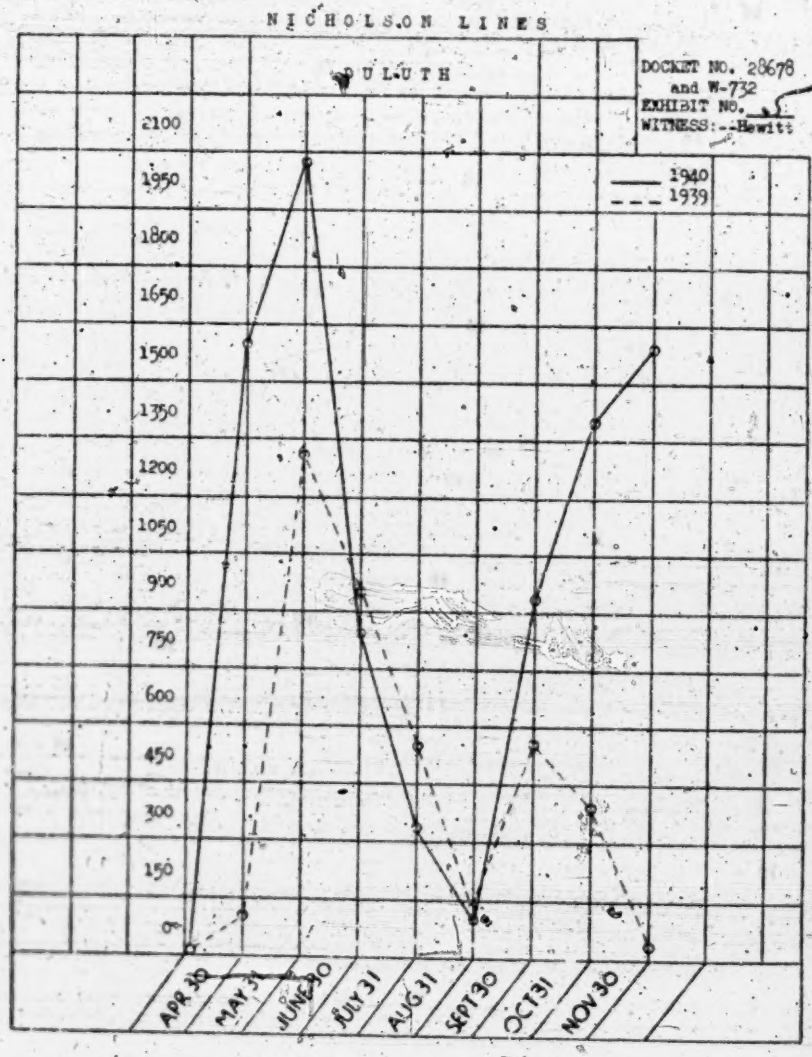
BULK DIVISION VESSELS

	Sultana	Sonora	Cornelius, Jr.	Cornelius
Operating days	239	243	232	190
Bulk fleet in Duluth Service 40% of time (Duluth Service) (days)	96	97	93	76
Automobile capacity per trip	50	50	70	70
Automobile capacity per season*	400	400	490	420
Nicholson Universal Steamship Company automobiles actually carried	174	152	428	255
Total additional bulker capacity	226	248	62	165

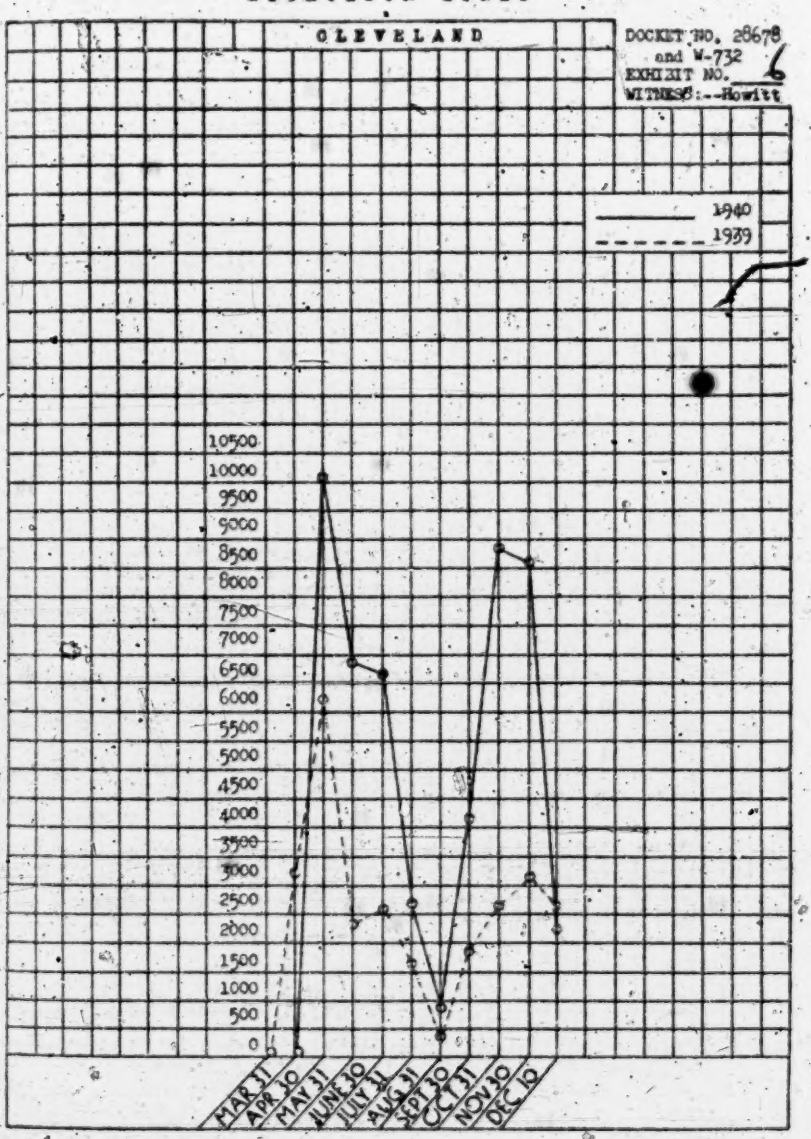
*Figured at 12 days to a trip.

	Autos
Additional automobile carrying capacity to Buffalo if entire unused capacity of fleet was placed in this service	87,342
Additional automobile carrying capacity to Cleveland if entire unused capacity of fleet was placed in this service	17,685
Additional automobile carrying capacity to Duluth if entire unused capacity of fleet was placed in this service (exclusive of bulk division)	20,114
Bulk Division	1470
Total	29,584
First sailing to Buffalo	4-27
First sailing to Cleveland	4-4
First sailing to Duluth	4-19

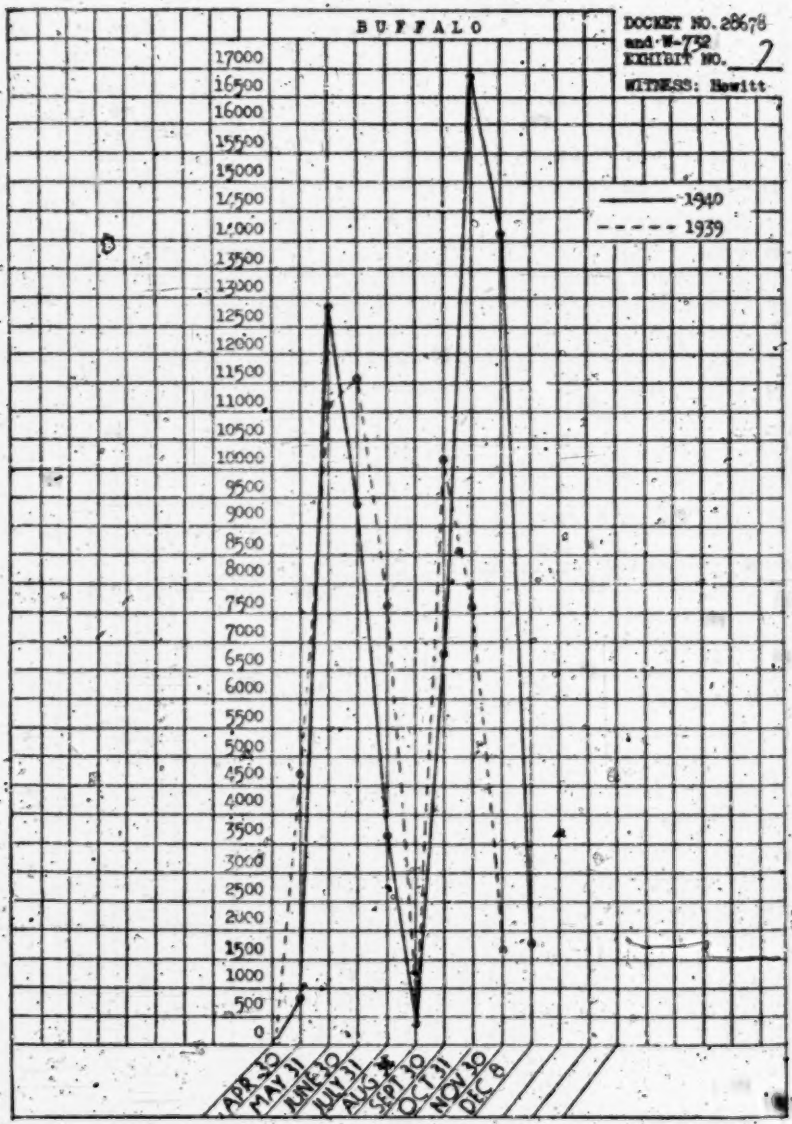
1Exclusive of 231 cars carried for Minnesota Atlantic Transit Co.


NICHOLSON LINES
DULUTH
DOCKET NO. 28678
and W-732
EXHIBIT NO.
WITNESS:--Hewitt
1940
1939
2100
1950
1800
1650
1500
1350
1200
1050
900
750
600
450
300
150
0
APR 30
MAY 31
JUNE 30
JULY 31
AUG 31
SEPT 30
OCT 31
NOV 30

NICHOLSON LINES



NICHOLSON LINES



827 *Docket No. 28678 and W-732, Exhibit No. 8*

Witness: Hewitt

On hand statement of autos, day by day, to Buffalo, Cleveland, and Duluth for the months of May, June, October, and November 1940

Date	Buffalo shipments on hand Detroit 7:00 a. m.	Number of autos dispatched that day	Cleveland shipments on hand Detroit 7:00 a. m.	Number of autos dispatched that day	Duluth shipments on hand Detroit 7:00 a. m.	Number of autos dispatched that day
5-1	6	345	76	225	182	
5-2	567		0	496	359	
5-3	835	1,060	73	229	550	
5-4	783		120	75	641	
5-5		441		340		248
5-6	0	376	3		394	224
5-7	44	451	20	211	178	
5-8	223		38	409	240	327
5-9	563	304	95	216	67	
5-10	999	845	130	217	203	
5-11	1,173	297	184	205	321	
5-12		981				30
5-13	0		0	61	291	
5-14	161	442	42	213	0	313
5-15	17	454	27	416	91	
5-16	400	297	125	204	211	
5-17	560	847	33	550	270	
5-18	987	298	147	167	56	274
5-19		730				48
5-20	0			66		
5-21	137	295	40	392	36	
5-22	35	450	73	213	31	68
5-23	459	271	112	408	139	
5-24	367	899	55	200	338	
5-25	687	754	118	365	321	
5-26		362				321
5-27	2	385	0	161	323	
5-28	0	622	40	362	50	
5-29	281		43	196	178	231
5-30	691	370	22		0	
5-31	340	397	27	47	0	
6-1	15		10		4	
6-2						
6-3	15		10		1	1
6-4	71	441	48	385	1	
6-5	270	361	87	408	52	
6-6	69	456	43	262	170	
6-7	315	849	41	216	282	
6-8	75	349	155		274	274
6-9		200		170		
6-10				148		
6-11	42	447	8	95	11	6
6-12	319	372	102	386	63	
6-13	562	759	50	147	80	5
6-14	141	722	22	320	134	
6-15	216		75	216	171	178
6-16		278		89		
6-17	1			134		
6-18	85	448	20	212	3	
6-19	197	574	147	497	42	
6-20	119		122	218	85	
6-21	202	644	190	409	129	74
6-22	467	451	239		95	
6-23		102		270		
6-24				134	96	
6-25	49	430	20	213	99	20
6-26	90	458	223	619	137	
6-27	172		105	215	177	
6-28	0	663	39	377	223	269
6-29	455		195	194	41	
6-30		561		32		
10-1	112	447	53	206		178
10-2	158		102	200	45	
10-3	652	445	52	498	46	54
10-4	799	640	69	354	34	69
10-5	783	437	134	204	102	
10-6		563		15		
10-7		216	3	142	122	
10-8	272	319	114	323	166	
10-9	326	301	94	348	206	
10-10	580	651	177	197	265	40
10-11	831	986	145	351	278	

On hand statement of autos, day by day, to Buffalo, Cleveland, and Duluth for the months of May, June, October, and November 1940—Continued

Date	Buffalo shipments on hand Detroit 7:00 a. m.	Number of autos dispatched that day	Cleveland shipments on hand Detroit 7:00 a. m.	Number of autos dispatched that day	Duluth shipments on hand Detroit 7:00 a. m.	Number of autos dispatched that day
10-12	911		100	103	119	119
10-13		664				13
10-14		816	14	204	225	173
10-15	106	665	111	205	60	60
10-16	403	757	113	323	62	
10-17	1,113	579	229	353	131	13
10-18	1,320	723	295		201	48
10-19	1,872	1,027	453	366	228	
10-20				354		
10-21	679	890	251	450	246	
10-22	719	563	49		250	46
10-23	1,204	647	101	383	210	110
10-24	1,342	806	20	370	290	
10-25	1,431	426	131	582	318	32
10-26	1,463	835	227	207	328	118
10-27		427		143		71
10-28	363	439	19	359	193	
10-29	592	1,014	112		117	
10-30	766	426	94	361	255	94
10-31	1,177	648	231	733	343	122
11-1	1,137	806	284	338	302	
11-2	1,463	204	405		377	
11-3		664		444		328
11-4	707	700	26	192		57
11-5	508	203	122	371	68	
11-6	950	293	197		181	
11-7	1,292	653	116	375	298	
11-8	1,887	728	218	380	447	
11-9	1,852	441	177	585	147	342
11-10		440		382		94
11-11	509	202	99		183	
11-12	1,169		346	369	283	
11-13	1,430	444	311		504	
11-14	1,428	426	411	343	747	
11-15	1,709	660	373	367	746	
11-16	1,851	561	609	376	746	
11-17		438		374		
11-18	1,415	644	248	376	734	57
11-19	1,115	737	186	379	342	357
11-20	1,403	205	376		322	
11-21	1,476	882	371	374	320	
11-22	990		31	373	320	
11-23	1,600	655	155	372	320	
11-24		439		206		
11-25	601	207		240		332
11-26	473	891	87			
11-27	536	291	68	540		
11-28	842	467	31	368		
11-29	831	431	456	368		
11-30	889		428	373		

829 *Docket No. 28678 and W-732, Exhibit No. 9*

Witness: Hewitt

Statement showing the number of automobiles transported by the Nicholson Universal Steamship Company for that portion of 1941 up to August 1 as compared with the number for the corresponding periods of 1938, 1939, 1940

	Buffalo	Cleveland	Duluth	Green Bay	Milwaukee	Total
1938	23,781	4,054	2,335	982	1,822	32,974
1939	34,986	16,021	2,937	1,248	3,770	58,962
1940	26,775	26,033	4,904	1,294	3,614	62,620
1941	50,606	35,351	5,877		3,571	95,405

830 *Docket No. 28678 and W-732, Exhibit No. 10*

Witness: Hewitt

Statement showing number of Duluth automobiles on hand each day at Detroit for 1941, the number of automobiles dispatched and capacity of Nicholson Universal Steamship Company bulkers available but not utilized in the Duluth service

1941	Detroit on hand 7:00 a. m.	Number of autos dispatched	Bulkers available and capacity
April			
1	0		
2	0		
3	58		
4	62		
5	62		
6	62		
7	62		
8	62		
9	62		
10	71		
11	74		
12	93	48	
13	45		
14	45	36	1 bulker 60.
15	9		1 bulker, 70.
16	51		
17	110		
18	199	64	
19	445	427	
20	18		
21	18		
22	155		
23			
24	343		
25	497		
26	610		
27		460	
28		64	
29	286		
30	403	70	
May			
1	348		
2	465		
3	631	359	
4		50	
5	255	5	
6	383		
7	458		
8	514	64	
9	471	63	
10	490		
11	196	358	
12			
13	253		
14	319		
15	319		
16	370	66	
17	328		
18	18	357	
19			1 bulker 70.
20	52		
21	111		
22	157		
23	217		
24	295	318	
25			1 bulker 70.
26			
27	49		
28	137		
29	175		1 bulker 70.
30	190	21	
31			
June			
1			1 bulker 60.
2			
3	52		
4	100		
5	182		1 bulker 70.
6	232		
7	345	353	1 bulker and barge 85.
8			
9			2 bulkers 123.
10	56	5	
11	136		
12	205		
13	282		
14	336		
15		365	
16			
17	64		
18	127		1 bulker and barge 85.
19	218	64	
20	205		
21	277		
22	305		
23		1	
24	365		
25	464	360	
26	195	1	
27	270		
28	350		
29			
30	315		1 bulker and barge 85.
July			
1	119	356	
2	206	1	
3	322		
4	518		
5	584		
6		349	
7	0	244	1 bulker 50.
8	57		
9	75	64	
10	154		
11	190	48	
12	150		
13		70	
14	84		
15	123	246	
16	0		
17	67		
18	143		
19	206		
20	206	207	
21	20	66	
22	34		
23	115		
24	166		
25	146	49	
26	166		
27			
28	204		
29	242		
30	264	64	
31	284		
Aug.			
1	348		
2	8	349	

833 Form B. W. C. 2 WC.....

Plaintiffs' Exhibit No. 4

May 31, 1941 965378

APPLICATION FOR ☒ CERTIFICATE AS COMMON CARRIER BY WATER

☐ PERMIT AS CONTRACT CARRIER BY WATER SUBJECT TO THE INTERSTATE COMMERCE ACT

(Before answering, read general instructions attached hereto)

Before the Interstate Commerce Commission 1941

Application of T. J. McCarthy Steamship Company a Michigan
(Name) (Trade Name)
corporation.

(Status as individual, partnership, association, corporation, fiduciary, etc. If a corporation, name the State of incorporation. If a partnership, give names and addresses of all partners. If an association or corporation, attach a list of names and addresses of directors and officers.)

210 Wayne Street, Detroit, Michigan.
(Street address) (City) (State)

Application below is for the appropriate authority to (check applicable status):

☒ To continue an operation in existence January 1, 1940, and continuously thereafter as a ☒ common carrier of ☐ passengers.

☐ To continue an operation not existing January 1, 1940, but existing February 1, 1941, as a ☐ contract carrier of ☒ property by water in interstate or foreign commerce (as defined in section 302 (i)).

Application for certificate as common carrier of property covers.

☐ All commodities.

☐ Commodities with exceptions as detailed in Exhibits "A" or "B."

Application for a contract carrier permit of property covers.

☐ All commodities with exceptions as detailed in Exhibits "A" or "B."

☒ Specific commodities as detailed in Exhibits "A" or "B."

Application covers ☒ regular routes, ☒ irregular routes.

834 Operation is ☐ year around, ☒ seasonal between—Varies due to ice conditions.

In support of this application, applicant submits the following exhibit attached hereto and made a part hereof:

☒ Exhibit "A". ☐ Exhibit "B." (See General Instructions.)

Applicant will furnish such additional information to sub-

stantiate the applicant's prayer as the Commission may require.

Applicant has complied with the order of the Commission relative to the service on interested parties, as shown below.

Applicant reserves the right to claim exemption from any and all provisions of Part III of the Interstate Commerce Act, the filing of this application not being deemed a waiver thereof, and the operations, if any, which applicant believes to be exempt are those described below:

(If exemption is claimed in respect of any operations applicant should here describe such operations, and in each instance make reference to the statutory provision or provisions under which the exemption is claimed.)

Exemption is claimed on bulk commodities, except when transported with nonexempt commodities.

Wherefore, The applicant herein prays: That the Commission issue a Certificate to operate as a Common _____
(Certificate) (Permit) (Common Carrier) (Contract Carrier)
of Property _____
(Passengers) (Property generally, or with exceptions, or
_____
specific commodities only, as detailed in Exhibits "A" or "B")

B. W. C. "A" I and applicant further prays that if the facts herein contained show that applicant, although applying for a Certificate, (Certificate) (Permit)
is entitled to a Permit, this application be considered one for the (Permit) (Certificate)
appropriate form of authority.

Dated this 28th day of May 1941.

T. J. McCARTHY STEAMSHIP COMPANY,
(Applicant)
By T. J. McCARTHY, *President*.
(Title)

835 OATH

STATE OF MICHIGAN,
County of Wayne, ss:

T. J. McCarthy (Name of affiant) makes oath and says that he is the President (Title of affiant) of the T. J. McCarthy Steamship Company (Name of applicant); that he is authorized on the part of said applicant to verify and file with the Interstate Commerce Commission this application and exhibits attached hereto and made a part hereof; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has knowledge of the matter set forth therein, and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

T. J. McCARTHY.

Subscribed and sworn to before me, a Notary Public in and for the State and county above named, this 28th day of May 1941.

[SEAL] L. D. TRAUT.

My commission expires June 4, 1943.

CERTIFICATE OF SERVICE

A copy of this application has been served by receipted mail on the Governors of the following States: Michigan, Ohio, Pennsylvania, New York.

A notice of the filing of this application (Form B. W. C. 5) has been served by receipted mail on the following known waterline competitors: Detroit and Cleveland Navigation Company, Detroit and Cleveland Steamship Company, Great Lakes Transit Corporation, Minnesota Atlantic Transit Company and Nicholson Universal Steamship Company.

Postal receipts or certificates of mailing covering the above are attached hereto.

Date: May 29, 1941.

(Signed) THOMAS L. LOTT.

836 EXHIBIT "A"

(This exhibit to be filled out by applicants for common carrier certificates or contract carrier permits claiming status under the provisos of section 309 (a) or 309 (f) of the Interstate Commerce Act.)

T. J. McCarthy Steamship Company

(Name of Applicant)

Except as otherwise noted, the following information is to be as of January 1, 1940. The information given should, where necessary, cover a sufficient period prior to such date to give a clear and fair picture of the nature and extent of the business of applicant which properly should be covered by the certificate or permit sought. Wherever changes in the nature or extent of the operation have been made since January 1, 1940, they should be clearly indicated.

DESCRIPTION OF TRANSPORTATION SERVICE, ROUTES, PORTS SERVED REGULARLY AND IRREGULARLY, AND OTHER PERTINENT INFORMATION

I. Description of transportation service:

A. Applicant (or predecessor in interest) was engaged in the business of transporting, in interstate or foreign commerce:

(1) ☐ Commodities generally.

(2) ☐ Commodities generally, except _____

(Indicate exceptions either specifically or by their general nature)

(3) ☒Special commodities. See Exhibit B. W. C. "A" I.
(Indicate specifically commodities transported)

(4) ☐ Passengers.

B. Applicant (or predecessor in interest) undertook to transport passengers or property for the general public for hire. No.
(Yes or No)

If answer is "No," state for whom applicant (or predecessor in interest) transported since January 1, 1940, or prior thereto, under special contracts or agreements:

Name, Detroit and Cleveland Navigation Company, Address, (Street, City, and State) 210 Wayne Street, Detroit, Michigan; wirtten or verbal contract or agreement and date thereof, February 18, 1937 and renewed on February 1, each year thereafter including 1941.

Commodity covered, see Exhibit B. W. C. "A" II; volume agreed to be transported, capacity of vessel during season; duration of contract or agreement, option for renewal through 1942.

NOTE: Lines (1a), (2a), (3a), etc., are a continuation respectively of the same contract referred to on lines (1), (2), (3), etc.)

837 C. Applicant (or predecessor in interest) has continued to operate as above stated without any change in the transportation service as described above and is now so operating. No
(Yes or No)

If answer is "No", state in detail character and extent of such change in service. Interrupted by ice conditions on Great Lakes.

D. If the changes indicated in the answer to (C) above represent interruptions of transportation service since January 1, 1940, caused by conditions over which applicant (or predecessor in interest) had no control, give facts and reasons clearly and in detail. No interruptions, except due to ice conditions.

E. Applicant (or predecessor in interest) is engaged in furnishing seasonal transportation only. Yes. If the answer is "Yes,"
(Yes or No)

state the limits of the seasonal operation, naming month of commencement and month of cessation. This varies due to ice conditions on Great Lakes. If the above seasonal perioc does not include January 1, 1940, was applicant (or predecessor in interest) rendering above service during the seasonal period ending prior to that date? Yes Was applicant (or predecessor in interest) providing same service during seasonal period subsequent to January 1, 1940? Yes Outline fully any changes in character and extent of service between seasonal operation including, or prior to, January 1, 1940, and subsequent seasonal operation: No difference except ports may open or close earlier one year than another.

II. DESCRIPTION OF ROUTES:

A. Regular Routes: Ports or points to or from which applicant (or predecessor in interest) regularly operated as of January 1, 1940, or prior thereto, and number of revenue calls at each between January 1, 1940, and date of application: Between Detroit, Michigan, and Cleveland, Ohio, and between Detroit, Michigan, and Buffalo, New York; also between Buffalo, New York, and Cleveland, Ohio. Number of revenue calls at each port via T. J. McCarthy Steamship Company from January 1, 1940, to date of this application (May 28, 1941), Cleveland, Ohio (78), Buffalo, New York (78), Detroit, Michigan (51).

B. Irregular Routes: Ports or points to or from which applicant (or predecessor in interest) offered occasional but irregular service as of January 1, 1940, or prior thereto, and number
838 of revenue calls at each between January 1, 1940, and date of application: Between Detroit, Michigan, and Erie, Pennsylvania. No revenue calls made between January 1, 1940, and date of this application (May 27, 1941).

C. Has applicant (or predecessor in interest) acquired by purchase or otherwise a route or routes since January 1, 1940? No
(Yes or No)
If so, attach statement, properly designated, giving, for each such route, the information requested in A and B above, also name and address of predecessor. Attach copy of purchase agreement, or other documents, evidencing the acquisition of each such route or routes.

D. Does applicant apply for rights over any route or routes operated by others under agreement? No If so, attach statement,
(Yes or No)
properly designated, giving, for each route, the information requested in A and B above, also name and address of operator. Attach copy of charter, operating contract, or other agreement.

E. Does applicant apply for rights over any route or routes over which it operates ships owned by others under charter, contract, or other agreement? No If so, attach statement, properly
(Yes or No)
designated, giving, for each such route, the information requested in A and B above, also name and address of the other party to such charter, contract, or agreement. Attach copy of such charter, contract, or agreement.

F. Has applicant (or predecessor in interest) abandoned or disposed of by sale or otherwise any route or routes since January 1, 1940? No If so, attach statement, properly designated, giving,
(Yes or No)
for each such route, the information requested in A and B above, the manner and date of disposition, and name and address of suc-

cessor, if any. Attach copy of the sales agreement or other documents evidencing such disposal.

G. Were operations on any of the above routes or parts of such routes covered by answer to questions C, D, E, or F seasonal? Yes (Yes or No)
If so, attach statement, properly designated, giving facts clearly and in detail, showing applicant's customary operation (or that of predecessor in interest), including months of normal operating season.

H. If applicant (or predecessor in interest) is subject to Part III of the Interstate Commerce Act in transportation of passengers or property in interstate or foreign commerce only by reason of participation in through routes and joint rates, name carriers with whom such traffic was interchanged as of January 1, 1940, or prior thereto, and interchange points: No.

839 State clearly any changes since January 1, 1940:

III. Description of Equipment:

A. Total number of vessels in commission and operated by applicant (or predecessor in interest) as a common or contract carrier on January 1, 1940, including vessels owned, chartered, or leased from others. One.

(1) Number of owned vessels operated by applicant (or predecessor in interest). None.

(2) Number of vessels under charter to applicant (or predecessor in interest). None.

(Answers to (1) and (2) should total answer (A).)

B. Number of vessels owned by applicant (or predecessor in interest) and under charter to others on January 1, 1940. One.

C. Total number of vessels in commission and operated by applicant (or predecessor in interest) as a common or contract carrier on date of this application, including vessels owned, chartered, or leased from others. One.

(1) Number of owned vessels operated by applicant (or predecessor in interest). One.

(2) Number of vessels under charter to applicant (or predecessor in interest). None.

(Answers to (1) and (2) should total answer (C).)

D. Number of vessels owned by applicant (or predecessor in interest) and under charter to others on date of this application. One.

IV. Dual Operations:

A. Is applicant (or predecessor in interest) controlled by a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a

contract carrier by water? No. If answer is "Yes," state name
(Yes or no)
and address of such person, and whether such person is applying for a common carrier certificate or contract carrier permit.

Was applicant (or predecessor in interest) so controlled on January 1, 1940? No.
(Yes or no)

B. Does applicant (or predecessor in interest) control a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a
840 contract carrier by water? No. If answer is "Yes," state
(Yes or no)
name and address of such person, and whether such person is applying for a common carrier certificate or contract carrier Permit.

Did applicant (or predecessor in interest) control such person on January 1, 1940? No.
(Yes or no)

C. Is applicant (or predecessor in interest) under common control with a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? Yes. If aswer is "Yes,"
(Yes or No)
state name and address of such person, and whether such person is applying for a common carrier certificate or contract carrier permit. Automotive Trades Steamship Company, 210 Wayne Street, Detroit, Michigan, which company is filing for certificate as common carrier. Was applicant (or predecessor in interest) under such common control on January 1, 1940? No.
(Yes or no)

Evidence of Operation:

A. Applicant submits the following evidence as proof of its operations (or those of predecessor in interest) as of January 1, 1940: See Affidavit of T. J. McCarthy, President, Exhibit B. W. C. "A" III.

(Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents which it believes sufficiently prove the maintenance of service as stated.)

B. Applicant submits the following evidence as proof of its operations (or those of predecessor in interest) on the date of this application: See Affidavit of T. J. McCarthy, President, Exhibit B. W. C. "A" IV.

(Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents

which it believes sufficiently prove the maintenance of service as stated.)

841 T. J. McCarthy Steamship Company's
Exhibit B. W. C. "A" I

Automobiles, passenger;
Chassis, commercial;
Chassis, freight automobile;
Chassis, passenger automobile;
Hearses, automobile;
Trailers, motor vehicle;
Trucks, panel or commercial delivery;
Trucks, motor vehicle;
Set up, on wheels.

T. J. McCarthy Steamship Company's
Exhibit B. W. C. "A" II

Automobiles, passenger;
Chassis, commercial;
Chassis, freight automobile;
Chassis, passenger automobile;
Hearses, automobile;
Trailers, motor vehicle;
Trucks, panel or commercial delivery;
Trucks, motor vehicle;
Set up, on wheels.

842 T. J. McCarthy Steamship Company's
Exhibit B. W. C. "A" III

State of Michigan,
County of Wayne, ss:

T. J. McCarthy, being duly sworn, deposes and says that he is, and has been since 1935, President of T. J. McCarthy Steamship Company, a Michigan corporation; that on the 18th day of February 1937, said T. J. McCarthy Steamship Company chartered to the Detroit & Cleveland Navigation Company its Steamer "George W. Mead" for the transportation of automobiles and motor vehicles on the Great Lakes, principally between Detroit and Lake Erie ports and between Lake Erie ports.

Deponent further says that the said charter contained on option under which the said charter might be renewed by the Detroit & Cleveland Navigation Company for the years 1938 through 1942, said option to be exercised on or before February 1 of each year; that the said option has been so exercised each year commencing

with 1938 to and including 1941; that under the said charter arrangement the T. J. McCarthy Steamship Company, as owner, was to pay all the expenses of fitout including the procuring of the vessel's certificate for service by the United States Local Inspectors of Steam Vessels. The owner likewise agreed to stand all expense in connection with establishing and marking the load line, and to pay any and all expenses of whatsoever nature in connection with laying up the ship at the end of the charter period. Further to pay any and all expense of any structural changes, alterations or betterments to machinery or equipment which might be ordered by the Steamboat Inspection Service or any governmental agency or which might be necessary to maintain and continue her classification.

That subsequently owner assumed a portion of the salaries
843 of the Licensed Dock and Engine Department personnel who were under union contracts and who ordinarily served for a period longer than the usual season of navigation.

That during the season of navigation of 1939 and 1940 the said Steamer "Mead" was operated on the routes between Detroit, Michigan, and Buffalo, New York, and Cleveland, Ohio, and between Buffalo, New York, and Cleveland, Ohio, and is now so operating.

Deponent further says that said T. J. McCarthy Steamship Company has had in effect with the Detroit & Cleveland Navigation Company a solicitation agreement for the solicitation for automobiles and motor vehicles for transportation between Detroit and Lake Erie ports since 1937.

Further Deponent saith not.

T. J. McCarthy.
T. J. McCarthy.

Subscribed and sworn to before me this 28th day of May A. D. 1941.

L. D. Traut,
L. D. Traut,
Notary Public, Wayne County, Michigan.

My Commission expires June 4, 1943.

844 T. J. McCarthy Steamship Company's Exhibit B. W. C.

"A" IV

State of Michigan,
County of Wayne, ss.

T. J. McCarthy, being duly sworn, deposes and says that he is the President of T. J. McCarthy Steamship Company, a Michigan corporation, and that the operations which are outlined in Exhibit

B. W. C. "A" III have continued since 1937 on the same basis as outlined in that affidavit and that the charter arrangement and solicitation agreement referred to therein are still in effect and that the company vessel is presently operating under that arrangement on the routes between Detroit, Michigan, and Lake Erie ports and between Lake Erie ports.

Further your Deponent saith not.

T. J. McCarthy.
T. J. McCarthy.

Subscribed and sworn to before me this 28th day of May A. D. 1941.

L. D. Traut,
L. D. Traut,
Notary Public, Wayne County, Michigan.

My Commission expires June 4, 1943.

845 *Plaintiffs' Exhibit No. 5*

WC.....

AMENDMENT TO ORIGINAL APPLICATION FOR ☒ CERTIFICATE AS COMMON CARRIER BY WATER

☐ PERMIT AS CONTRACT CARRIER BY WATER SUBJECT TO THE INTERSTATE COMMERCE ACT

(Before answering, read general instructions attached hereto)

Before the Interstate Commerce Commission

Application of T. J. McCarthy Steamship Company,
(Trade) (Trade Name)
a Michigan, corporation,

(Status as individual, partnership, association, corporation, fiduciary, etc. If a corporation, name the State of incorporation. If a partnership, give names and addresses of all partners. If an association or corporation, attach a list of names and addresses of directors and officers.)

210 Wayne Street, Detroit, Michigan
(Street address) (City) (State)

Application below is for the appropriate authority to (check applicable status):

☒ To continue an operation in existence January 1, 1940, and continuously thereafter as a ☒ common carrier or ☐ passengers.

☒ To continue an operation not existing January 1, 1940, but existing February 1, 1941, as a ☐ contract carrier of ☒ property. By water in interstate or foreign commerce (as defined in section 302 (i)).

Application for certificate as common carrier of property covers
☐ All commodities.
☐ Commodities with exceptions as detailed in Exhibits "A" or "B."

Application for a contract carrier permit of property covers
☐ All commodities with exceptions as detailed in Exhibits "A" or "B."
☒ Specific commodities as detailed in Exhibits "A" or "B" B. W. C. "B" I.

Application covers ☒ regular routes, ☒ irregular routes.
846 Operation is ☐ year around, ☒ seasonal between—varies due to ice conditions.

In support of this application, applicant submits the following exhibit attached hereto and made a part hereof:
☐ Exhibit "A". ☒ Exhibit "B". (See General Instructions.)

Applicant will furnish such additional information to substantiate the applicant's prayer as the Commission may require.

Applicant has complied with the order of the Commission relative to the service on interested parties, as shown below.

Applicant reserves the right to claim exemption from any and all provisions of Part III of the Interstate Commerce Act, the filing of this application not being deemed a waiver thereof, and the operations, if any, which applicant believes to be exempt are those described below:

(If exemption is claimed in respect of any operations applicant should here describe such operations, and in each instance make reference to the statutory provision or provisions under which the exemption is claimed.)

Exemption is claimed on bulk commodities except when transported with nonexempt commodities.

Wherefore, The applicant herein prays: That the Commission issue a Certificate (Certificate) (Permit) to operate as a common (Common Carrier) ——— of Property (Contract Carrier) (Passengers) (Property generally, or with exceptions, or specific commodities only, as detailed in Exhibits "A" or "B") B. W. C. "B" I and applicant further prays that if the facts herein contained show that applicant, although applying for a Certificate, (Certificate) (Permit) is entitled to a Permit (Permit) (Certificate) this application be considered one for the appropriate form of authority.

Dated this 16th day of October 1941.

T. J. McCarthy Steamship Company,
(Applicant)
By T. J. McCarthy, *President*.
(Title)

847 OATH

STATE OF MICHIGAN,
County of Wayne, ss:

T. J. McCarthy makes oath and says that he is the president of
(Name of affiant) (Title of affiant)
the T. J. McCarthy Steamship Company; that he is authorized on
(Name of applicant)
the part of said applicant to verify and file with the Interstate Commerce Commission this application and exhibits attached hereto and made a part hereof; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has knowledge of the matter set forth therein, and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

T. J. MCCARTHY.
T. J. McCarthy.

Subscribed and sworn to before me, a Notary Public in and for the State and county above named, this 16th day of October 1941.

[SEAL] L. D. TRAUT.
L. D. Traut.

My commission expires June 4, 1943.

CERTIFICATE OF SERVICE

A copy of this application has been served by receipted mail on the Governors of the following States: Michigan, Ohio, Pennsylvania, New York.

A notice of the filing of this application (Form B. W. C. 5) has been served by receipted mail on the following known waterline competitors: Detroit and Cleveland Navigation Company, Detroit and Cleveland Steamship Company, Great Lakes Transit Corporation, Minnesota-Atlantic Transit Company and Nicholson Universal Steamship Company.

Postal receipts or certificates of mailing covering the above are attached hereto.

Date October 16, 1941.

S. D. FOSTER.
(Signed) S. D. Foster.

848 EXHIBIT "A"

(This exhibit to be filled out by applicants for common carrier certificates or contract carrier permits claiming status under the provisos of section 309 (a) or 309 (f) of the Interstate Commerce Act.)

(Name of applicant)

Except as otherwise noted, the following information is to be as of January 1, 1940. The information given should, where necessary, cover a sufficient period prior to such date to give a clear and fair picture of the nature and extent of the business of applicant which properly should be covered by the certificate or permit sought. Wherever changes in the nature or extent of the operation have been made since January 1, 1940, they should be clearly indicated.

DESCRIPTION OF TRANSPORTATION SERVICE, ROUTES, PORTS SERVED REGULARLY AND IRREGULARLY, AND OTHER PERTINENT INFORMATION

I. Description of Transportation Service:

A. Applicant (or predecessor in interest) was engaged in the business of transporting, in interstate or foreign commerce:

(1) ☐ Commodities generally.

(2) ☐ Commodities generally, except _____
(Indicate exceptions, either specifically or by their general nature)

(3) ☐ Special commodities _____
(Indicate specifically commodities transported)

(4) ☐ Passengers.

B. Applicant (or predecessor in interest) undertook to transport passengers or property for the general public for hire. _____
(Yes or No)

If answer is "No," state for whom applicant (or predecessor in interest) transported since January 1, 1940, or prior thereto, under special contracts or agreements:

Name	*Address (street, city and state)*	*Written or verbal contract or agreement and date thereof*
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		

Comomdity covered	*Volume agreed to be transported*	*Duration of contract or agreement*
(1a)		
(2a)		
(3a)		
(4a)		
(5a)		
(6a)		

(NOTE: Lines (1a), (2a), (3a), etc. are a continuation respectively of the same contract referred to on lines (1), (2). (3), etc.)

849 EXHIBIT "B"

(This exhibit to be filled out by applicants for common carrier certificates or contract carrier permits who were in operation on February 1, 1941, but not claiming status under the provisos of section 309 (a) or 309 (f) of the Interstate Commerce Act)

T. J. McCarthy Steamship Company
(Name of applicant)

Except as otherwise noted, the following information is to be as of the date of filing application. The information given should, where necessary cover a sufficient period prior to such date to give a clear and fair picture of the nature and extent of the business of applicant which properly should be covered by the certificate or permit sought.

DESCRIPTION OF TRANSPORTATION SERVICE, ROUTES, PORTS SERVED REGULARLY AND IRREGULARLY, AND OTHER PERTINENT INFORMATION

I. Description of Transportation Service:

A. Applicant is engaged in the business of transporting, in interstate or foreign commerce:

(1) ☐ Commodities generally.

(2) ☐ Commodities generally, except _____
(Indicate exceptions, either specifically or by their general nature)

(3) ☐ Special commodities See Exhibit B. W. C. "B" I.
(Indicate specifically commodities transported)

(4) ☐ Passengers.

B. Applicant undertakes to transport passengers or property for the general public for hire. Yes. If answer is "No," state for (Yes or No)
whom applicant has transported under special contracts or agreements:

Name, Detroit and Cleveland Navigation Company; address (street, city and state), 210 Wayne Street, Detroit, Michigan; written or verbal contracts or agreement and date thereof, February 18, 1937, and renewed on February 1 each year thereafter, including 1941.

850 Commodity covered, (1a) See Exhibit B. W. C. (2a) "B" I; volume agreed to be transported, capacity of vessel during season; duration of contract or agreement, option for renewal through 1942.

(NOTE—Lines (1a), (2a), (3a), etc., are a continuation respectively of same contract referred to in lines (1), (2), (3), etc.)

C. Applicant is engaged in furnishing seasonal transportation only. Yes (Yes or No) If the answer is "Yes," state the limits of the seasonal operation naming month of commencement and month of cessation. Varies due to ice conditions.

If the above seasonal period does not include February 1, 1941, was applicant rendering above service during the seasonal period ending prior to that date? ---------- (Yes or No)

D. If applicant was not engaged in furnishing seasonal transportation, name date operation commenced.

II. Description of Routes:

A. Regular Routes: Ports or points to or from which applicant was regularly operating as of February 1, 1941, or prior thereto, and number of revenue calls at each between date operation commenced and date of application: Between Detroit, Michigan, and Cleveland, Ohio. Between Detroit, Michigan, and Buffalo, New York. Between Buffalo, New York, and Cleveland, Ohio. Number of revenue calls at each port via T. J. McCarthy Steamship Company from January 1, 1940 to date of original application (May 28, 1941) Cleveland, Ohio, 78; Buffalo, New York, 78; Detroit, Michigan, 51; and numerous trips to the same ports since May 28, 1941.

B. Irregular Routes: Ports or points to or from which applicant offered occasional but irregular service as of February 1, 1941, or prior thereto, and number of revenue calls at each between date operation commenced and date of application:

851 ---

C. If applicant is subject to Part III of the Interstate Commerce Act in transportation of passengers or property in interstate or foreign commerce only by reason of participation in through routes and joint rates, name carriers with whom such traffic is interchanged and interchange points:

III. Description of Equipment:

A. Total number of vessels in commission and operated by applicant as a common or contract carrier on February 1, 1941, including vessels owned, chartered, or leased from others. One.

(1) Number of owned vessels operated by applicant. One—Limited.

(2) Number of vessels under charter to applicant. None.

(Answers to (1) and (2) should total answer to (A))

B. Number of vessels owned by applicant and under charter to others on February 1, 1941. One—Limited.

C. Total number of vessels in commission and operated by applicant as a common or contract carrier on date of this application, including vessels owned, chartered, or leased from others. One.

(1) Number of owned vessels operated by applicant. One Limited.

(2) Number of vessels under charter to applicant. None.

(Answers to (1) and (2) should total answer to (C))

D. Number of vessels owned by applicant and under charter to others on date of this application. One—Limited.

852 IV. Dual Operations:

A. Is applicant controlled by a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? No.

(Yes or No)

If answer is "Yes," state name and address of such person, and whether such person is applying for a common carrier certificate or contract carrier permit.

B. Does applicant control a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? No. If

(Yes or No)

answer is "Yes," state name and address of such person, and whether such person is applying for a common carrier certificate or a contract carrier permit.

C. Is applicant under common control with a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? Yes. If answer is "Yes," state name and address of such

(Yes or No)

person, and whether such person is applying for a common carrier certificate or contract carrier permit. Automotive Trades Steamship Company.

V. Evidence of Operation:

A. Applicant submits the following evidence as proof of its operations as of February 1, 1941: See Affidavit of T. J. McCarthy, President. Exhibit B. W. C. "B" II.

(Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents, which it believes sufficiently prove the maintenance of service as stated.)

B. Applicant submits the following evidence as proof of its operations on the date of this application: See Affidavit of T. J. McCarthy, President. Exhibit B. W. C. "B" III.

853 (Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents, which it believes sufficiently prove the maintenance of service as stated.)

VI. Evidence of Qualifications:

A. Applicant for common carrier certificate submits the following evidence as proof that it is fit, willing, and able properly to perform the service proposed, and to conform to the provisions of Part III of the Interstate Commerce Act, and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent authority is sought, is or will be required by the present or future public convenience and necessity.

(Applicant should list the documents it is attaching hereto which it believes sufficiently prove that the operation for which the common carrier certificate is sought will meet the above requirements. The documents must include the following:)

(1) A statement of assets and liabilities, or if a newly organized corporation a statement of proposed capitalization and method of financing.

(2) If applicant has been in operation an income statement and profit and loss statement for the period of its operation; in the event the operation is such as to come under the Interstate Commerce Act, as amended, only in part, give a segregated profit and loss statement for such operation coming within the provisions of the Act, indicating the method of segregation.

(3) A statement containing brief description of the experience of the principal officers and operating personnel.

(4) An estimate of the available traffic and applicant's expected handling by classes of commodities or by number of passengers, and the prospective revenue and income from all traffic which applicant expects to handle.

(5) A statement of whether applicant's operation will be for the benefit of particular industries.

(6) A list of the known water carrier competitors now giving service between the ports which applicant proposes to serve.

As to (1) to (5) both inclusive, see Exhibit B. W. C. "B" IV.

(6) Nicholson Universal Steamship Company, Great Lakes Transit Corporation, Minnesota-Atlantic Transit Company.

854 B. Applicant for contract carrier permit submits the following evidence as proof that it is fit, willing and able properly to perform the service proposed and to conform to the provisions of Part III of the Interstate Commerce Act, and the

requirements, rules, and regulations of the Commission thereunder, and that such operation will be consistent with the public interest and the national transportation policy declared in the act.

(Applicant should list the documents it is attaching hereto which it believes sufficiently prove that the operation for which the contract carrier permit is sought will meet the above requirements.) The documents must include the following:

(1) A statement of assets and liabilities, or if a newly organized corporation, a statement of proposed capitalization and method of financing.

(2) If applicant has been in operation, an income statement and profit and loss statement for the period of its operation; in the event the operation is such as to come under the Interstate Commerce Act, as amended, only in part, give a segregated profit and loss statement for such operation coming within the provisions of the Act, indicating the method of segregation.

(3) A statement containing brief description of the experience of the principal officers and operating personnel.

(4) An estimate of the available traffic and applicant's expected handling by classes of commodities or by number of passengers, and the prospective revenue and income from all traffic which applicant expects to handle.

(5) A statement of whether applicant's operation will be for the benefit of particular industries.

(6) A list of the known water carrier competitors now giving service between the ports which applicant proposes to serve.

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855 T. J. McCarthy Steamship Company's Exhibit B. W. C. "B" I

Automobiles, passenger;
Chassis, commercial;
Chassis, freight automobile;
Chassis, passenger automobile;
Hearses, automobile;
Trailers, motor vehicle;
Trucks, panel or commercial delivery;
Trucks, motor vehicle;
Set up, on wheels.

856 T. J. McCarthy Steamship Company's Exhibit B. W. C. "B" H

State of Michigan,
County of Wayne, ss:

T. J. McCarthy, being duly sworn, deposes and says that he is and has been since 1935, President of T. J. McCarthy Steamship Company, a Michigan corporation; that on the 18th day of February, 1937, said T. J. McCarthy Steamship Company chartered to the Detroit & Cleveland Navigation Company its Steamer "George W. Mead" for the transportation of automobiles and motor vehicles on the Great Lakes, principally between Detroit and Lake Erie ports and between Lake Erie ports.

Deponent further says that the said charter contained an option under which the said charter might be renewed by the Detroit & Cleveland Navigation Company for the years 1938 through 1942, said option to be exercised on or before February 1 of each year; that the said option has been so exercised each year commencing with 1938 to and including 1941; that under the said charter arrangement the T. J. McCarthy Steamship Company, as owner, was to pay all the expenses of fitout including the procuring of the vessel's certificate for service by the United States Local Inspectors of Steam Vessels. The owner likewise agreed to stand all expense in connection with establishing and marking the load line, and to pay any and all expenses of whatsoever nature in connection with laying up the ship. Further to pay any and all expense of any structural changes, alterations or betterments to machinery or equipment which might be ordered by the Steamboat Inspection Service or any governmental agency or which might be necessary to maintain and continue her classification.

That subsequently owner under an agreement with charterer assumed a portion of the salaries of the Licensed Deck and Engine

Department personnel who were under union contracts and
857 who ordinarily served for a period longer than the usual season of navigation.

That during the season of navigation of 1939 and 1940 the said Steamer "Mead" was operated on the routes between Detroit, Michigan, and Buffalo, N. Y. and Cleveland, Ohio, and between Buffalo, New York, and Cleveland, Ohio, and is now so operating.

Dependent further says that said T. J. McCarthy Steamship Company has had in effect with the Detroit & Cleveland Navigation Company a solicitation agreement for the solicitation for automo

biles and motor vehicles for transportation between Detroit and Lake Erie ports since 1937.

Further Deponent saith not.

T. J. McCARTHY.
T. J. McCarthy.

Subscribed and sworn to before me this 16th day of October A. D. 1941.

L. D. TRAUT,
L. D. Traut,
Notary Public, Wayne County, Michigan.

My Commission expires June 4, 1943.

858 T. J. McCARTHY STEAMSHIP COMPANY'S EXHIBIT B. W. C. "B" III

STATE OF MICHIGAN,
County of Wayne, ss:

T. J. McCarthy, being duly sworn, deposes and says that he is the President of T. J. McCarthy Steamship Company, a Michigan corporation, and that the corporations which are outlined in Exhibit B. W. C. "B" II have continued since 1937 on the same basis as outlined in that affidavit and that the charter arrangement and solicitation agreement referred to therein are still in effect and that the company vessel is presently operating under that arrangement on the routes between Detroit, Michigan, and Lake Erie ports and between Lake Erie ports.

Further your Deponent saith not.

T. J. McCARTHY.
T. J. McCarthy.

Subscribed and sworn to before me this 16th day of October A. D. 1941.

L. D. TRAUT,
L. D. Traut,
Notary Public, Wayne County, Michigan.

My Commission expires June 4, 1943.

859 T. J. McCARTHY STEAMSHIP COMPANY'S EXHIBIT B. W. C. "B" IV

(2) Applicant has been in operation since 1936 and has attached its balance sheet as of September 30, 1941, and its income and expense statement covering the period from January 1, 1941, to September 30, 1941; (See Exhibit B. W. C. "B" V) that as applicant has not previously operated as a regulated carrier, it is not possible to make a segregation for such operation as comes within the pro-

vision of the Act. Quarterly reports are presently being filed with the Interstate Commerce Commission.

(3) Mr. T. J. McCarthy, President of T. J. McCarthy Steamship Company, has been engaged in the operation of vessels on the Great Lakes for approximately twenty years. He served in executive capacities with the original Nicholson Transit Company and the Nicholson Universal Steamship Company for about twelve years. He has been in charge of the automobile division of the Detroit & Cleveland Navigation Company since 1933 and President of Automotive Trades Steamship Company since its organization in 1936.

Mr. John P. Ramaban, Vice-President, was employed by the Nicholson Universal Steamship Company for a number of years and has been in charge of the eastern operations of applicant with headquarters in Buffalo, New York, since its organization and prior to that time in charge of the eastern operation of the T. J. McCarthy Steamship Company since its organization.

Mrs. Margaret M. Joynt, Secretary, is the daughter of Mr. T. J. McCarthy, President, and is connected with the Public School System of the City of Detroit.

Mr. Wm. J. Hoffman, Freight Traffic Manager, was for many years with the Traffic Department of Dodge Brothers Corporation and with the Nicholson Universal Steamship Company.

860 He has been associated with the T. J. McCarthy Steamship Company and with the Automotive Trades Steamship Company for the past six years.

(4) In the event Detroit and Cleveland Navigation Company should not charter the Steamer T. J. McCarthy, it is estimated that that vessel and her sister ship, the George H. Ingalls, will move during the season of 1942, upwards of 25,000 automobiles between Detroit and Lake Erie ports.

(5) The company's business will be primarily in the service of the automobile industry.

861 T. J. McCarthy Steamship Company
Exhibit B. W. C. "B" V

T. J. McCarthy Steamship Company, Balance Sheet, as at September 30, 1941

ASSETS

Current:		
Cash in Banks	$33,935.70	
Accounts Receivable—Trade	11,841.17	
Accounts Receivable—Lake Materials Corporation	3,343.50	
Accounts Receivable—Automotive Trades Steamship Co	7,844.41	
Materials and Supplies	1,544.65	
		$48,509.43

T. J. McCarthy Steamship Company, Balance Sheet, as at September 30, 1941—Continued

ASSETS

Current Assets—Fixed:			
Steamer "George W. Mead"	$75,000.00		
Reserve for Depreciation	25,833.19		
		$49,166.81	
Furniture and Fixtures	997.84		
Reserve for Depreciation	444.08		
		553.76	
Investment—Automotive Trades Steamship Co.		10,000.00	
			$59,720.57
Deferred Charges:			
Prepaid Rent		389.75	
Fit Out and Lay Up Expense		3,149.00	
			3,538.75
Total Assets			111,768.75

LIABILITIES AND NET WORTH

Current:			
Accounts Payable—Trade		$2,311.23	
Accounts Payable—T. J. McCarthy		55,529.38	
Total Current Liabilities			57,840.61
Fixed:			
Long-Term Note, T. J. McCarthy		10,846.58	
Dividend Notes Payable		9,000.00	
Interest thereon		2,160.00	
			22,006.58
Net Worth:			
Capital Stock Authorized and Issued	$10,000.00	10,000.00	
Surplus:			
Balance as of January 1, 1941	10,186.54		
Adjustments to September 30, 1941	277.58		
Net Income to September 30, 1941	11,457.44		
Balance September 30, 1941		21,921.56	
Net Worth			31,921.56
Total Liabilities and Net Worth			111,768.75

862 T. J. McCARTHY, STEAMSHIP COMPANY

Income and Expense Statement January 1, 1941 to September 30, 1941

Income:		
Revenue from Steamer "George W. Mead"	$5,155.35	
Commissions Earned	71,101.84	
Gross Operating Revenue		$76,257.19
Expense:		
Advertising	$365.30	
Insurance—General	298.00	
Janiter's Supplies and Expense	225.00	
Legal and Auditing	694.80	
Miscellaneous	382.96	

Income and Expense Statement January 1, 1941—Continued

Expense—Continued			
Office Supplies and Expense		$112.71	
Rent		310.00	
Sales Expense		3.19	
Taxes		386.31	
Telephone and Telegraph		247.20	
Traveling		131.71	
Life Insurance—Officers		919.40	
Tariff Printing		107.94	
Commission Expense		60,436.57	
Total Expense			$64,621.09
Net Operating Income			11,636.10
Other Income and Expense:			
Discounts Earned		$26.88	
Interest Expense	(Dr.)	205.54	
			178.66
Net Income			11,457.44

863 *Plaintiffs' Exhibit No. 6*

WC

MAY 31, '41 965410.

APPLICATION FOR

☒ CERTIFICATE AS COMMON CARRIER BY WATER

☐ PERMIT AS CONTRACT CARRIER BY WATER SUBJECT TO THE INTERSTATE COMMERCE ACT

(Before answering, read general instructions attached hereto)

Before the Interstate Commerce Commission

Application of Automotive Trades Steamship Company
(Name) (Trade Name)

a Delaware corporation.

(Status as individual, partnership, association, corporation, fiduciary, etc. If a corporation, name the State of incorporation. If a partnership, give names and addresses of all partners. If an association or corporation, attach a list of names and addresses of directors and officers.)

210 Wayne Street, Detroit 31, Michigan
(Street address) (City) (State)

Application below is for the appropriate authority to (check applicable status):

☒ To continue an operation in existence January 1, 1940, and continuously thereafter as a ☒ common carrier of ☐ passengers.

☐ To continue an operation not existing January 1, 1940, but existing February 1, 1941 as a ☐ contract carrier of ☒ property.

By water in interstate or foreign commerce (as defined in section 302 (i)).

Application for certificate as common carrier of property covers:

☐ All commodities.

☐ Commodities with exceptions as detailed in Exhibits "A" or "B".

Application for a contract carrier permit of property covers:

☐ All commodities with exceptions as detailed in Exhibits "A" or "B."

☒ Specific commodities as detailed in Exhibits "A" B. W. C. I.

Application covers ☒ regular routes, ☒ irregular routes.

BWC 2b.

864 Operation is ☐ year around, ☒ seasonal between—varies due to ice conditions.

In support of this application, applicant submits the following exhibit attached hereto and made a part hereof:

☒ Exhibit "A" ☐ Exhibit "B". (See General Instructions.)

Applicant will furnish such additional information to substantiate the applicant's prayer as the Commission may require.

Applicant has complied with the order of the Commission relative to the service on interested parties, as shown below.

Applicant reserves the right to claim exemption from any and all provisions of Part III of the Interstate Commerce Act, the filing of this application not being deemed a waiver thereof, and the operations, if any, which applicant believes be exempt are those described below:

(If exemption is claimed in respect of any operations applicant should here describe such operations, and in each instance make reference to the statutory provision or provisions under which the exemption is claimed.)

Exemption is claimed on bulk commodities except when transported with nonexempt commodities.

Wherefore, The applicant herein prays: That the Commission issue a Certificate to operate as a Common Carrier ---------- of Property ----------

(Certificate) (Permit) (Contract Carrier)

(Passengers) (Property generally, or with exceptions, or specific commodities only, as detailed in Exhibits "A" or "B")

B. W. C. "A" I, and applicant further prays that if the facts herein contained show that applicant, although applying for a Certificate, is entitled to a Permit, this application be considered one for the appropriate form of authority.

(Certificate) (Permit) (Permit) (Certificate),

Dated this 28th day of May 1941.

AUTOMOTIVE TRADES STEAMSHIP COMPANY,
(Applicant)

By T. J. MCCARTHY, *President*.
(Title)

865 OATH

STATE OF MICHIGAN,
County of Wayne, ss:

T. J. McCarthy makes oath and says that he is the President of
(Name of affiant) (Title of affiant)
the Automotive Trades Steamship Company; that he is author-
(Name of applicant)
ized on the part of said applicant to verify and file with the Interstate Commerce Commission this application and exhibits attached hereto and made a part hereof; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has knowledge of the matter set forth therein, and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

T. J. McCARTHY.

Subscribed and sworn to before me, a Notary Public in and for the State and county above named, this 28th day of May 1941.

[SEAL] L. D. TRAUT.

My commission expires June 4, 1943.

CERTIFICATE OF SERVICE

A copy of this application has been served by receipted mail on the Governors of the following States: Michigan, Minnesota, New York, Ohio, Pennsylvania.

A notice of the filing of this application (Form B. W. C. 5) has been served by receipted mail on the following known water-line competitors: Detroit and Cleveland Navigation Company, Detroit and Cleveland Steamship Company, Great Lakes Transit Corporation, Minnesota Atlantic Transit Company, and Nicholson Universal Steamship Company.

Postal receipts or certificates of mailing covering the above are attached hereto.

Date May 29th 1941.

(Signed) THOMAS L. LOTT.

866 EXHIBIT "A"

(This exhibit to be filled out by applicants for common carrier certificates or contract carrier permits claiming status under the provisos of section 309 (a) or 309 (f) of the Interstate Commerce Act.) Automotive Trades Steamship Company.
(Name of applicant)

Except as otherwise noted, the following information is to be as of January 1, 1940. The information given should, where neces-

ary, cover a sufficient period prior to such date to give a clear and air picture of the nature and extent of the business of applicant hich properly should be covered by the certificate or permit ought. Wherever changes in the nature or extent of the operation ave been made since January 1, 1940, they should be clearly indiated.

ESCRIPTION OF TRANSPORTATION SERVICE, ROUTES, PORTS SERVED REGULARLY AND IRREGULARLY, AND OTHER PERTINENT INFORMATION

. Description of Transportation Service:

A. Applicant (or predecessor in interest) was engaged in the usiness of transporting, in interstate or foreign commerce:

(1) ☐ Commodities generally.

(2) ☐ Commodities generally, except _____
(Indicate exceptions)
(Either specifically or by their general nature)

(3) ☒ Special commodities See Exhibit B. W. C. "A" I.
(Indicate specifically commodities transported)

(4) ☐ Passengers.

B. Applicant (or predecessor in interest) undertook to ransport passengers or property for the general public for ire. No. If answer is "No", state for whom applicant (or (Yes or No)
redecessor in interest) transported since January 1, 1940, or prior hereto, under special contracts or agreements:

Name, Detroit and Cleveland Navigation Company; address, street, city, and state), 210 Wayne Street, Detroit, Michigan; ritten or verbal contract or agreement and date thereof, February 18, 1937, March 30, 1940, and renewed including the year 1941. Commodity covered, See Exhibit B. W. C. "A" I; volume agreed o be transported, Capacity of vessels during season; duration of ontract or agreement, Option for renewal through 1942 on teamer "Morris S. Tremaine."

(NOTE: Lines (1a), 2a), (3a), etc. are a continuation respecvely of the same contract referred to on lines (1), (2), (3), etc.)

37 C. Applicant (or predecessor in interest) has continued to operate as above stated without any change in the transortation service as described above and is now so operating. No. If answer is "No," state in detail character and extent of (Yes or No)
uch change in service. Interrupted by ice conditions on Great akes.

D. If the changes indicated in the answer to (C) above represent interruptions of transportation service since January 1, 1940, caused by conditions over which applicant (or predecessor in interest) had no control, give facts and reasons clearly and in detail. No interruptions except due to ice conditions.

E. Applicant (or predecessor in interest) is engaged in furnishing seasonal transportation only. Yes. (Yes or No) If the answer is "Yes," state the limits of the seasonal operation, naming month of commencement and month of cessation. This varies due to ice conditions on Great Lakes.

If the above seasonal period does not include January 1, 1940, was applicant (or predecessor in interest) rendering above service during the seasonal period ending prior to that date? Yes. (Yes or No) Was applicant (or predecessor in interest) providing same service during seasonal period subsequent to January 1, 1940? Yes. (Yes or No) Outline fully any changes in character and extent of service between seasonal operation including, or prior to, January 1, 1940, and subsequent seasonal operation. No difference except ports may open or close earlier one year than another.

II. Description of Routes:

A. Regular Routes: Ports or points to or from which applicant (or predecessor in interest) regularly operated as of January 1, 1940, or prior thereto, and number of revenue calls at each between January 1, 1940, and date of application: Between Detroit, Michigan and Cleveland, Ohio; also between Detroit, Michigan and Buffalo, New York; also between Buffalo, New York and Cleveland, Ohio. Revenue trips: Cleveland, 117; Buffalo, 176; Detroit, 85.

B. Irregular Routes: Ports or points to or from which applicant (or predecessor in interest) offered occasional but irregular service as of January 1, 1940, or prior thereto, and number of
868 revenue calls at each between January 1, 1940, and date of application: Between Detroit, Michigan and Erie, Pennsylvania. No revenue calls made since January 1, 1940, to date of this application.

C. Has applicant (or predecessor in interest) acquired by purchase or otherwise a route or routes since January 1, 1940? No. (Yes or No) If so, attach statement, properly designated, giving, for each such route, the information requested in A and B above, also name and address of predecessor. Attach copy of purchase agreement, or other documents, evidencing the acquisition of each such route or routes.

D. Does applicant apply for rights over any route or routes perated by others under agreement? No. If so, attach state- (Yes or No)
ent, properly designated, giving, for each route, the information quested in A and B above, also name and address of operator. ttach copy of charter, operating contract, or other agreement.

E. Does applicant apply for rights over any route or routes er which it operates ships owned by others under charter, con- act, or other agreement? No. If so, attach statement, properly (Yes or No)
signated, giving, for each such route, the information requested A and B above, also name and address of the other party to ch charter, contract, or agreement. Attach copy of such charter, ntract, or agreement.

F. Has applicant (or predecessor in interest) abandoned or sposed of by sale or otherwise any route or routes since January 1940? No. If so, attach statement, properly designated, giv- (Yes or No)
g, for each such route, the information requested in A and B ove, the manner and date of disposition, and name and address successor, if any. Attach copy of the sales agreement or other cuments evidencing such disposal.

G. Were operations on any of the above routes or parts of such utes covered by answer to question C, D, E, or F seasonal? es. If so, attach statement, properly designated, giving facts es or No)
early and in detail, showing applicant's customary operation r that of predecessor in interest), including months of normal erating season.

H. If applicant (or predecessor in interest) is subject to Part I of the Interstate Commerce Act in transportation of pas- ngers or property in interstate or foreign commerce only by ason of participation in through routes and joint rates, name rriers with whom such traffic was interchanged as of January 1, 1940, or prior thereto, and interchange points: No.

State clearly any changes since January 1, 1940:

I. Description of Equipment:

A. Total number of vessels in commission and operated by plicant (or predecessor in interest) as a common or contract car- r on January 1, 1940, including vessels owned, chartered, or sed from others. Two.

(1) Number of owned vessels operated by applicant (or prede- ssor in interest). Two.

(2) Number of vessels under charter to applicant (or prede- ssor in interest) None.

nswers to (1) and (2) should total answer to (A).)

B. Number of vessels owned by applicant (or predecessor in interest) and under charter to others on January 1, 1940. Two.

C. Total number of vessels in commission and operated by applicant (or predecessor in interest) as a common or contract carrier on date of this application, including vessels owned, chartered, or leased from others. Two.

(1) Number of owned vessels operated by applicant (or predecessor in interest). Two.

(2) Number of vessels under charter to applicant (or predecessor in interest). None.

(Answers to (1) and (2) should total answers to (C).)

D. Number of vessels owned by applicant (or predecessor in interest) and under charter to others on date of this application. Two.

IV. Dual Operations:

A. Is applicant (or predecessor in interest) controlled by a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? No. If answer is "Yes," state name and address of such person, and whether such person is applying for a common carrier certificate or contract carrier permit. ---------

(Yes or No)

Was applicant (or predecessor in interest) so controlled on January 1, 1940? No.

(Yes or No)

B. Does applicant (or predecessor in interest) control a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? No. If answer is "Yes," state name and address of such person, and whether such person is applying for a common carrier certificate or contract carrier permit.

870

(Yes or No)

Did applicant (or predecessor in interest) control such person on January 1, 1940? No.

(Yes or No)

C. Is applicant (or precedessor in interest) under common control with a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? Yes. If the answer is "Yes," state name and address of such person, and whether such person is applying for a common carrier certificate or contract carrier permit. T. J. McCarthy Steamship Company, 210 Wayne Street, Detroit, Michigan, filing for Certificate as Common Carrier.

(Yes or No)

Was applicant (or predecessor in interest) under such common control on January 1, 1940? Yes.

(Yes or No)

Evidence of operation:

A. Applicant submits the following evidence as proof of its operations (or those of predecessor in interest) as of January 1, 1940: See affidavit of T. J. McCarthy, President. Exhibit B. W. C. "A" III.

(Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents which it believes sufficiently prove the maintenance of service as stated.)

B. Applicant submits the following evidence as proof of its operations (or those predecessor in interest) on the date of this application: See Affidavit of T. J. McCarthy, President. Exhibit B. W. C. "A" IV.

(Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents which it believes sufficiently prove the maintenance of service as stated.)

71 AUTOMOTIVE TRADES STEAMSHIP COMPANY'S EXHIBIT B. W. C. "A" I

Automobiles, passengers;
Chassis, commercial;
Chassis, freight automobiles;
Chassis, passenger automobiles;
Hearses, automobile;
Trailers, motor vehicle;
Trucks, panel or commercial delivery;
Trucks, motor vehicle;
Set up, on wheels.

AUTOMOTIVE TRADES STEAMSHIP COMPANY'S EXHIBIT B. W. C. "A" II

Automobiles, passengers;
Chassis, commercial;
Chassis, freight automobile;
Chassis, passenger automobile;
Hearses, automobile;
Trailers, motor vehicle;
Trucks, panel or commercial delivery;
Trucks, motor vehicle;
Set up, on wheels.

872 AUTOMOTIVE TRADES STEAMSHIP COMPANY'S EXHIBIT B. W. C. "A" III

STATE OF MICHIGAN,
County of Wayne, ss:

T. J. McCarthy, being duly sworn, deposes and says that he is, and has been since 1936, President of Automotive Trades Steamship Company, a Delaware corporation; that on the 18th day of February, 1937, said Automotive Trades Steamship Company chartered to the Detroit & Cleveland Navigation Company its Steamer "Morris S. Tremaine" and subsequently, and on the 30th day of March, 1940, its Steamer "George H. Ingalls" for the transportation of automobiles and motor vehicles on the Great Lakes, principally between Detroit and Lake Erie ports and between Lake Erie ports.

Deponent further says that the said charter on the Steamer "Morris S. Tremaine" contained an option under which the said charter might be renewed by the Detroit & Cleveland Navigation Company for the years 1938 through 1942, said option to be exercised on or before February 1 of each year; that the said option has been so exercised each year commencing with 1938 to and including 1941; that under the said charter arrangement the Automotive Trades Steamship Company, as owner, was to pay all the expenses of fitout including the procuring of the vessel's certificate for service by the United States Local Inspectors of Steam Vessels. The owner likewise agreed to stand all expense in connection with establishing and marking the load line, and to pay any and all expenses of whatsoever nature in connection with laying up the ship at the end of the charter period. Further to pay any and all expense of any structural changes, alterations or betterments to machinery or equipment which might be ordered by the Steamboat Inspection service or any governmental agency or which might be necessary to maintain and continue her classification.

873 That subsequently owner assumed a portion of the salaries of the Licensed Deck and Engine Department personnel who were under union contracts and who ordinarily served for a period longer than the usual season of navigation.

That during the season of navigation of 1939 and 1940 the said Steamers "Morris S. Tremaine" and "George H. Ingalls" were operated on the routes between Detroit, Michigan, and Buffalo, New York, and Cleveland, Ohio, and between Buffalo, New York, and Cleveland, Ohio, and are now so operating.

Further Deponent saith not.

T. J. McCARTHY.

T. J. McCarthy.

Subscribed and sworn to before me this 28th day of May A. D. 1941.

L. D. TRAUT,
L. D. Traut,
Notary Public, Wayne County, Michigan.

My Commission expires June 4, 1943.

874 AUTOMOTIVE TRADES STEAMSHIP COMPANY'S EXHIBIT B. W. C. "A" IV

STATE OF MICHIGAN,
County of Wayne, ss:

T. J. McCarthy, being duly sworn, deposes and says that he is the President of Automotive Trades Steamship Company, a Delaware corporation, and that the operations which are outlined in Exhibit B. W. C. "A" III have continued since 1937 on the same basis as outlined in that affidavit and that the charter arrangement and solicitation agreement referred to therein are still in effect and that the company vessel is presently operating under that arrangement on the routes between Detroit, Michigan, and Lake Erie ports and between Lake Erie ports.

Further your Deponent saith not.

T. J. MCCARTHY.
T. J. McCarthy.

Subscribed and sworn to before me this 28th day of May A. D. 1941.

L. D. TRAUT,
L. D. Traut,
Notary Public, Wayne County, Michigan.

My Commission expires June 4, 1943.

875 *Plaintiffs' Exhibit No. 7*

Form B. W. C. 2 WC 729

AMENDMENT TO ORIGINAL APPLICATION FOR ☒ CERTIFICATE AS COMMON CARRIER BY WATER ☐ PERMIT AS CONTRACT CARRIER BY WATER SUBJECT TO THE INTERSTATE COMMERCE ACT

(Before answering, read general instructions attached hereto)

Before the Interstate Commerce Commission

Application of Automotive Trades Steamship Company, a Delaware Corporation.
(Name) (Trade Name)

(Status as individual, partnership, association, corporation, fiduciary, etc. If a corporation, name the State of incorporation. If a partnership, give names and addresses of all partners. If an association or corporation, attach a list of names and addresses of directors and officers.)

210 Wayne Street, Detroit, Michigan, P. O. Box 1117.
(Street Address) (City) (State)

Application below is for the appropriate authority to (check applicable status):

☒ To continue an operation in existence January 1, 1940, and continuously thereafter as a ☒ common carrier of ☐ passengers.

☒ To continue an operation not existing January 1, 1940, but existing February 1, 1941, as a ☐ contract carrier of ☒ property. by water in interstate or foreign commerce (as defined in section 302 (i)).

Application for certificate as common carrier of property covers.

☐ All commodities.

☐ Commodities with exceptions as detailed in Exhibits "A" or "B."

Application for a contract carrier permit of property covers

☐ All commodities with exceptions as detailed in Exhibits "A" or "B."

☒ Specific commodities as detailed in Exhibits "A" or "B"

B. W. C. "B" I.

Application covers ☒ regular routes ☒ irregular routes.

876 Operations is ☐ year around, ☒ seasonal between—varies due to ice conditions.

In support of this application, applicant submits the following exhibit attached hereto and made a part hereof:

☐ Exhibit "A." ☒ Exhibit "B." (See General Instructions.)

Applicant will furnish such additional information to substantiate the applicant's prayer as the Commission may require.

Applicant has complied with the order of the Commission relative to the service on interested parties, as shown below.

Applicant reserves the right to claim exemption from any and all provisions of Part III of the Interstate Commerce Act, the filing of this application not being deemed a waiver thereof, and the operations, if any, which applicant believes to be exempt are those described below:

(If exemption is claimed in respect of any operations applicant should here describe such operations, and in each instance make reference to the statutory provision or provisions under which the exemption is claimed.)

Exemption is claimed on bulk commodities except when transported with nonexempt commodities.

Wherefore, The applicant herein prays: That the Commission issue a Certificate to operate as a Common _____
(Certificate) (Permit) (Common Carrier)
of _____ Property B. W. C. "B" I
(Contract Carrier) (Passengers) (Property generally, or with exceptions, or specific commodities only, as detailed in Exhibits "A" or "B").
and applicant further prays that if the facts herein contained show that applicant, although applying for a Certificate, is entitled to a Permit this application be considered one for the appro-
(Certificate) (Permit) (Permit) (Certificate)
priate form of authority.

Dated this 16th day of October 1941.

AUTOMOTIVE TRADES STEAMSHIP COMPANY,
(Applicant)
T. J. McCARTHY,
By T. J. McCarthy,
President.
(Title)

877

OATH

STATE OF MICHIGAN,
County of Wayne, ss:

T. J. McCarthy makes oath and says that he is the President of
(Name of affiant) (Title of affiant)
the Automotive Trades Steamship Company; that he is authorized
(Name of applicant)
on the part of said applicant to verify and file with the Interstate Commerce Commission this application and exhibits attached hereto and made a part hereof; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has knowledge of the matter set forth therein, and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

T. J. McCARTHY.
T. J. McCarthy.

Subscribed and sworn to before me, a Notary Public in and for the State and county above named, this 16th day of October 1941.

[SEAL]

L. D. TRAUT.
L. D. Traut.

My commission expires June 4, 1943.

CERTIFICATE OF SERVICE

A copy of this application has been served by receipted mail on the Governors of the following States: Michigan, New York, Ohio, Pennsylvania.

A notice of the filing of this application (Form B. W. C. 5) has been served by receipted mail on the following known water-line competitors:

Detroit and Cleveland Navigation Company, Great Lakes Transit Corporation, Minnesota-Atlantic Transit Company, Nicholson Universal Steamship Company.

Postal receipts or certificates of mailing covering the above are attached hereto.

Date October 16, 1941.

S. D. FOSTER.
(Signed) S. D. Foster.

878 EXHIBIT "A"

(This exhibit to be filled out by applicants for common carrier certificates or contract carrier permits claiming status under the provisos of section 309 (a) or 209 (f) of the Interstate Commerce Act.)

(Name of Applicant)

Except as otherwise noted, the following information is to be as of January 1, 1940. The information given should, where necessary, cover a sufficient period prior to such date to give a clear and fair picture of the nature and extent of the business of applicant which properly should be covered by the certificate or permit sought. Wherever changes in the nature or extent of the operation have been made since January 1, 1940, they should be clearly indicated.

DESCRIPTION OF TRANSPORTATION SERVICE, ROUTES, PORTS SERVED REGULARLY AND IRREGULARLY, AND OTHER PERTINENT INFORMATION

I. Description of Transportation Service:

A. Applicant (or predecessor in interest) was engaged in the business of transporting, in interstate or foreign commerce:

(1) ☐ Commodities generally.

(2) ☐ Commodities generally, except _____
(Indicate exception, either specifically or by their general nature)

(3) ☐ Special commodities _____
(Indicate specifically commodities transported)

(4) ☐ Passengers.

B. Applicant (or predecessor in interest) undertook to transport passengers or property for the general public for hire. _____. If answer is "No", state for whom applicant (or
(Yes or No)

predecessor in interest) transported since January 1, 1940, or prior thereto, under special contracts or agreements:

	Name	Address (street, city, and State)	Written or verbal contract or agreement and date thereof
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			

	Commodity covered	Volume agreed to be transported	Duration of contract or agreement
(1a)			
(2a)			
(3a)			
(4a)			
(5a)			
(6a)			

(NOTE: Lines (1a), (2a), (3a), etc. are a continuation respectively of the same contract referred to on lines (1), (2), (3), etc.)

879

EXHIBIT "B"

(This exhibit to be filed out by applicants for common carrier certificates or contract carrier permits who were in operation on February 1, 1941, but not claiming status under the provisos of section 309 (a) or 309 (f) of the Interstate Commerce Act)

Automotive Trades Steamship Company.
(Name of Applicant)

Except as otherwise noted, the following information is to be as of the date of filing application. The information given should, where necessary, cover a sufficient period prior to such date to give a clear and fair picture of the nature and extent of the business of applicant which properly should be covered by the certificate or permit sought.

DESCRIPTION OF TRANSPORTATION SERVICE, ROUTES, PORTS SERVED REGULARLY AND IRREGULARLY, AND OTHER PERTINENT INFORMATION

I. Description of Transportation Service:

A. Applicant is engaged in the business of transporting, in interstate or foreign commerce:

(1) ☐ Commodities generally.
(2) ☐ Commodities generally, except _____
(Indicate exceptions, either specifically or by their general nature)
(3) ☒ Special commodities. See Exhibit B. W. C. "B" I.
(Indicate specifically commodities transported)
(4) ☐ Passengers.

B. Applicant undertakes to transport passengers or property for the general public for hire. Yes. If answer is "No", state (Yes or No)
for whom applicant has transported under special contracts or agreements:

Name, Detroit and Cleveland Navigation Company; address (street, city, and State), 210 Wayne Street, Detroit, Michigan; written or verbal contracts or agreement and date thereof, February 18, 1937, March 30, 1940, renewed, including year 1941.

880 — Commodity covered, See Exhibit B. W. C. "B" I; volume agreed to be transported, capacity of vessels during season; duration of contract or agreement, option for renewal through 1942 on Steamer "T. J. McCarthy," nee "Morris S. Tremaine," Steamer "George H. Ingalls" for season of 1941. No option to renew.

(NOTE.—Lines (1a), (2a), (3a), etc., are a continuation respectively of same contract referred to in lines (1), (2), (3), etc.).

C. Applicant is engaged in furnishing seasonal transportation only. Yes. If the answer is "Yes," state the limits of the seasonal (Yes or No)
operation, naming month of commencement and month of cessation. This varies due to ice conditions.

If the above seasonal period does not include February 1, 1941, was applicant rendering above service during the seasonal period ending prior to that date? Yes.
(Yes or No)

D. If applicant was not engaged in furnishing seasonal transportation, name date operation commenced.

II. Description of Routes:

A. Regular Routes: Ports or points to or from which applicant was regularly operating as of February 1, 1941, or prior thereto, and number of revenue calls at each between date operation commenced and date of application: Between Detroit, Michigan and Cleveland, Ohio. Between Detroit, Michigan, and Buffalo, New York. Between Buffalo, New York, and Cleveland, Ohio. Revenue trips from January 1, 1940, to date of original application (May 28, 1941) Cleveland, Ohio, 117; Buffalo, New York, 176; Detroit, Michigan, 85; and numerous trips to the several ports since May 28, 1941.

B. Irregular Routes: Ports or points to or from which applicant offered occasional but irregular service as of February 1, 1941, or prior thereto, and number of revenue calls at each between date operation commenced and date of application:

881 Between Detroit, Michigan, and Erie, Pennsylvania. (No revenue calls made since January 1, 1940.)

C. If applicant is subject to Part III of the Interstate Commerce Act in transportation of passengers or property in interstate or foreign commerce only by reason of participation in through routes and joint rates, name carriers with whom such traffic is interchanged and interchange points:

III. Description of Equipment:

A. Total number of vessels in commission and operated by applicant as a common or contract carrier on February 1, 1941, including vessels owned, chartered, or leased from others. Two.

(1) Number of owned vessels operated by applicant. One—Limited.

(2) Number of vessels under charter to applicant. None.

(Answers to (1) and (2) should total answer to (A).)

B. Number of vessels owned by applicant and under charter to others on February 1, 1941. One—Limited.

C. Total number of vessels in commission and operated by applicant as a common or contract carrier on date of this application, including vessels owned, chartered, or leased from others. Two.

(1) Number of owned vessels operated by applicant. One.

(2) Number of vessels under charter to applicant. None.

(Answers to (1) and (2) should total answer to (C).)

D. Number of vessels owned by applicant and under charter to others on date of this application. Two—Limited.

882 IV. Dual Operations:

A. Is applicant controlled by a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? No.

(Yes or No)

If answer is "Yes," state name and address of such person, and whether such person is applying for a common carrier certificate or a contract carrier permit.

B. Does applicant control a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? No. If answer is "Yes," state name and address of such person, and whether such person is applying for a common carrier certificate or a contract carrier permit.

(Yes or No)

C. Is applicant under common control with a person who has filed or intends to file a separate application for a certificate as a common carrier by water or a permit as a contract carrier by water? Yes. If answer is "Yes," state name and address of (Yes or No)
such person, and whether such person is applying for a common carrier certificate or contract carrier permit. T. J. McCarthy Steamship Company.

V. Evidence of Operation:

A. Applicant submits the following evidence as proof of its operations as of February 1, 1941: See Affidavit of T. J. McCarthy, President. Exhibit B, W. C. "B" II.

(Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents, which it believes sufficiently prove the maintenance of service as stated.)

B. Applicant submits the following evidence as proof of its operations on the date of this application: See Affidavit of T. J. McCarthy, President. Exhibit B. W. C. "B" III.

883 (Applicant should list above the documents it is attaching in the form of affidavits, bills of lading, schedules, or other documents, which it believes sufficiently prove the maintenance of service as stated.)

VI. Evidence of Qualifications:

A. Applicant for common carrier certificate submits the following evidence as proof that it is fit, willing, and able properly to perform the service proposed, and to conform to the provisions of Part III of the Interstate Commerce Act, and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent authority is sought, is or will be required by the present or future public convenience and necessity.

(Applicant should list the documents it is attaching hereto which it believes sufficiently prove that the operation for which the common carrier certificate is sought will meet the above requirements. The documents must include the following:)

(1) A statement of assets and liabilities, or if a newly organized corporation, a statement of proposed capitalization and method of financing.

(2) If applicant has been in operation, an income statement and profit and loss statement for the period of its operation; in the event the operation is such as to come under the Interstate Commerce Act, as amended, only in part, give a segregated profit and loss statement for such operation coming within the provisions of the Act, indicating the method of segregation.

(3) A statement containing brief description of the experience of the principal officers and operating personnel.

(4) An estimate of the available traffic and applicant's expected handling by classes of commodities or by number of passengers, and the prospective revenue and income from all traffic which applicant expects to handle.

(5) A statement of whether applicant's operation will be for the benefit of particular industries.

(6) A list of the known water carrier competitors now giving service between the ports which applicant proposes to serve.

As to (1) to (5), both inclusive, see Exhibit B. W. C. "B" IV (6) Nicholson University Steamship Company, Great Lakes Transit Corporation, Minnesota-Atlantic Transit Company.

884 B. Applicant for contract carrier permit submits the following evidence as proof that it is fit, willing, and able properly to perform the service proposed and to conform to the provisions of Part III of the Interstate Commerce Act, and the requirements, rules, and regulations of the Commission thereunder, and that such operation will be consistent with the public interest and the national transportation policy declared in the act.

(Applicant should list the documents it is attaching hereto which it believes sufficiently prove that the operation for which the contract carrier permit is sought will meet the above requirements. The documents must include the following:)

(1) A statement of assets and liabilities, or if a newly organized corporation a statement of proposed capitalization and method of financing.

(2) If applicant has been in operation an income statement and profit and loss statement for the period of its operation; in the event the operation is such as to come under the Interstate Commerce Act, as amended, only in part, give a segregated profit and loss statement for such operation coming within the provisions of the Act, indicating the method of segregation.

(3) A statement containing brief description of the experience of the principal officers and operating personnel.

(4) An estimate of the available traffic and applicant's expected handling by classes of commodities or by number of passengers, and the prospective revenue and income from all traffic which applicant expects to handle.

(5) A statement of whether applicant's operation will be for the benefit of particular industries.

(6) A list of the known water carrier competitors now giving service between the ports which applicant proposes to serve.

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885 AUTOMOTIVE TRADES STEAMSHIP COMPANY'S EXHIBIT B. W. C. "B"

Automobiles, passenger;
Chassis, commercial;
Chassis, freight automobile;
Chassis, passenger automobile;
Hearses, automobile;
Trailers, motor vehicle;
Trucks, panel or commercial delivery;
Trucks, motor vehicle;
Set up, on wheels.

886 AUTOMOTIVE TRADES STEAMSHIP COMPANY'S EXHIBIT B. W. C. "B" II

STATE OF MICHIGAN,
County of Wayne:ss:

T. J. McCarthy, being duly sworn, deposes and says that he is, and has been since 1936, President of Automotive Trades Steamship Company, a Delaware corporation; that on the 18th day of February 1937, said Automotive Trades Steamship Company chartered to the Detroit & Cleveland Navigation Company its steamer "T. J. McCarthy" nee "Morris S. Tremaine" and subsequently and on the 30th day of March 1940, its Steamer "George H. Ingalls" for the transportation of automobiles and motor vehicles on the Great Lakes, principally between Detroit and Lake Erie ports and between Lake Erie ports.

Deponent further says that the said charter on the Steamer "T. J. McCarthy" nee "Morris S. Tremaine" contained an option under which the said charter might be renewed by the Detroit & Cleveland Navigation Company for the years 1938 through 1942, said option to be exercised on or before February 1 of each year; that the said option has been so exercised each year commencing with 1938 to and including 1941; that under the said charter arrangement the Automotive Trades Steamship Company, as owner, was to pay all the expenses of fitout including the procuring of the vessel's certificate for service by the United States Local Inspectors of Steam Vessels. The owner likewise agreed to stand all expense in connection with establishing and marking the load line, and to pay any and all expenses of whatsoever nature in connection with laying up the ship. Further, to pay any and all expense of any structural changes, alterations or betterments to machinery or equipment which might be ordered by the Steamboat Inspection service or any governmental agency or which might be necessary to maintain and continue her classification.

887 That subsequently owner under an agreement with charterer assumed a portion of the salaries of the Licensed Deck and Engine Department personnel who were under union contracts and who ordinarily served for a period longer than the usual season of navigation.

That during the season of navigation of 1939 and 1940 the said Steamers "T. J. McCarthy" nee "Morris S. Tremaine" and "George H. Ingalls" were operated on the routes between Detroit, Michigan, and Buffalo, New York, and Cleveland, Ohio, and between Buffalo, New York ,and Cleveland, Ohio, and are now so operating.

Further Deponent saith not.

T. J. McCarthy.
T. J. McCarthy.

Subscribed and sworn to before me this 16th day of October A. D. 1941.

L. D. Traut,
L. D. Traut,
Notary Public, Wayne County, Michigan.

My Commission expires June 4, 1943.

888 AUTOMOTIVE TRADES STEAMSHIP COMPANY'S EXHIBIT B. W. C. "B" III

STATE OF MICHIGAN,
County of Wayne, ss.

T. J. McCarthy, being duly sworn, deposes and says that he is the President of T. J. McCarthy Steamship Company, a Michigan corporation, and that the operations which are outlined in Exhibit B. W. C. "B" II have continued since 1937 on the same basis as outlined in that affidavit and that the charter arrangement and solicitation agreement referred to therein are still in effect and that the company vessel is presently operating under that arrangement on the routes between Detroit, Michigan, and Lake Erie ports and between Lake Erie ports.

Further your Deponent saith not.

T. J. McCarthy.
T. J. McCarthy.

Subscribed and sworn to before me this 16th day of October A. D. 1941.

L. D. Traut,
L. D. Traut,
Notary Public, Wayne County, Michigan.

My Commission expires June 4, 1943.

88 AUTOMOTIVE TRADES STEAMSHIP COMPANY'S
EXHIBIT B. W. C. "B" IV

(2) Applicant has been in operation since 1936 and has attached its balance sheet as of September 30, 1941, and its income and expense statement covering the period from January 1, 1941, to September 30, 1941 (see Exhibit B. W. C. "B" V), that as applicant has not previously operated as a regulated carrier, it is not possible to make a segregation for such operation as comes within the provision of the Act. Quarterly reports are presently being filed with the Interstate Commerce Commission.

(3) Mr. T. J. McCarthy, President of Automotive Trades Steamship Company, has been engaged in the operation of vessels on the Great Lakes for approximately twenty years. He served in executive capacities with the original Nicholson Transit Company and the Nicholson Universal Steamship Company for about twelve years. He has been in charge of the automobile division of the Detroit & Cleveland Navigation Company since 1933 and President of Automotive Trades Steamship Company since its organization in 1936.

Mr. John P. Ranahan, Vice President, was employed by the Nicholson Universal Steamship Company for a number of years and has been in charge of the eastern operations of applicant with headquarters in Buffalo, New York, since its organization and prior to that time in charge of the eastern operation of the T. J. McCarthy Steamship Company since its organization.

Mrs. Margaret M. Joynt, Secretary, is the daughter of Mr. T. J. McCarthy, President, and is connected with the Public School System of the City of Detroit.

Mr. Wm. J. Hoffman, Freight Traffic Manager, was for many years with the Traffic Department of Dodge Brothers Corporation and with the Nicholson Universal Steamship Company.
890 He has been associated with the T. J. McCarthy Steamship Company and with the Automotive Trades Steamship Company for the past six years.

(4) In the event Detroit and Cleveland Navigation Company should not charter the Steamer "T. J. McCarthy," it is estimated that that vessel and her sister ship, the "George H. Ingalls," will move during the season of 1942 upwards of 50,000 automobiles between Detroit and Lake Erie ports.

(5) The company's business will be primarily in the service of the automobile industry.

891 AUTOMOTIVE TRADES STEAMSHIP COMPANY EXHIBIT
B. W. C. "B" V

Automotive Trades Steamship Company Balance Sheet as at September 30, 1941

ASSETS			
Current:			
Cash on Hand and in Bank		$15,983.27	
Accounts Receivable—Trade		524.03	
Accounts Receivable—Sundry		173.04	
Inventory—Materials and Supplies		354.90	
Total Current Assets			$17,035.24
Fixed:			
Steamer "George H. Ingalls"	$83,880.09		
Reserve for Depreciation	20,994.24		
		$62,385.85	
Steamer "Morris S. Tremaine"	79,586.13		
Reserve for Depreciation	26,925.61		
		52,660.52	
Small Tools, Equipment, etc.		197.78	
Total Fixed Assets			115,744.15
Deferred Charges:			
Fit Out and Lay Up Expense—Deferred			1,420.81
Total Assets			134,200.20
LIABILITIES AND NET WORTH			
Current:			
Accounts Payable—Trade		$1,110.72	
Federal Taxes Payable		477.30	
T. J. McCarthy		2,815.70	
J. P. Ranahan		2,730.00	
T. J. McCarthy Steamship Company		7,844.41	
Total Current Liabilities			$14,978.13
Long-Term Note Payable—Manufacturers National Bank			16,000.00
Total Liabilities			30,978.13
Net Worth:			
Capital Stock:			
$1.00 Par Value Authorized	$100,000.00		
Unissued	55,080.00		
Capital Stock Outstanding		$44,920.00	
Surplus: Balance—January 1, 1941	46,288.19		
Adjustments to September 30 1941 (Dr)	1,976.89		
Net Income	13,900.77		
Balance September 30, 1941		58,302.07	
Net Worth			103,222.07
			134,200.20

892 AUTOMOTIVE TRADES STEAMSHIP COMPANY

Income and expense statement, January 1, 1941, to September 30, 1941

Income:		
Steamship revenues:		
S. S. "George H. Ingalls"	$21,375.93	
S. S. "Morris S. Tremaine"	6,791.67	
Miscellaneous revenue	120.00	
Gross operating income		$28,287.60
Expense:		
Advertising	$239.50	
Executive salaries	3,270.00	
Insurance—general	327.76	
Janitor's supplies and expense	45.00	
Legal and auditing	1,040.00	
Miscellaneous	521.62	
Office salaries	1,800.00	
Office supplies and expense	101.81	
Rent	410.00	
Sales expense	22.33	
Sales salaries	1,800.00	
Taxes	890.70	
Telephone and telegraph	862.01	
Travel expense	75.00	
Tariff printing	156.89	
Life insurance—officers	1,708.20	
Total expense		13,370.82
Net operating income		14,916.78
Other income and expense:		
Discounts earned	$29.84	
Interest expense (Dr.)	955.85	
		926.01
Net income		13,990.77

893 Supreme Court of the United States

Statement of points intended to be relied upon by appellants and designation of record to be printed

Filed Feb. 7, 1945

The United States of America, Interstate Commerce Commission, T. J. McCarthy Steamship Company, and Automotive Trades Steamship Company, appellants in the above-entitled case, both in brief and oral argument will rely upon the ponts set forth in their assignment of errors heretofore filed.

Appellants designate to be printed as necessary for consideration of their appeal, all the record in this case heretofore docketed with this Court.

CHARLES FAHY,
Solicitor General,
WENDELL BERGE,
Assistant Attorney General,
For United States of America.
DANIEL W. KNOWLTON,
Chief Counsel,
DANIEL H. KUNKEL,
Attorney,
GORDON C. LOCKE,
Attorney,
For Interstate Commerce Commission.
SPARKMAN D. FOSTER,
Attorney,
For T. J. McCarthy Steamship Company and Automotive Trades Steamship Company.

AFFIDAVIT OF SERVICE

I hereby certify that I served a copy of the attached statement of points intended to be relied upon by appellants, and designation of record by appellants, upon each of the following counsel, this 6th day of February 1945 by mailing them a copy thereof: Willis C. Bullard, 2104 Dime Building, Detroit, Michigan; S. S. Eisen, 140 Cedar Street, New York, N. Y.; Frank W. Sullivan, 231 South La Salle Street, Chicago, Ill.; Ernest S. Ballard, 120 South La Salle Street, Chicago, Ill.

[File endorsement omitted.]

894 Supreme Court of the United States

Order noting probable jurisdiction

February 26, 1945

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[Endorsement on cover:] File No. 49330. D. C. U. S., Eastern Michigan. Term No. 877. The United States of America, Interstate Commerce Commission, T. J. McCarthy Steamship Company and Automotive Trades Steamship Company, Appellants vs. Detroit and Cleveland Navigation Company, Great Lakes Transit Company and Nicholson Universal Steamship Company. Filed January 27, 1945. Term No. 877 O. T. 1944.

U. S. GOVERNMENT PRINTING OFFICE: 1945

FILE COPY

Office Supreme Court, U. S.
FILED
JAN 27 1945
CHARLES ELMORE CROPLEY
CLERK

No. 877 22

In the Supreme Court of the United States

OCTOBER TERM, 1944

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, T. J. McCARTHY STEAMSHIP COMPANY AND AUTOMOTIVE TRADES STEAMSHIP COMPANY, APPELLANTS

vs.

DETROIT AND CLEVELAND NAVIGATION COMPANY, GREAT LAKES TRANSIT COMPANY AND NICHOLSON UNIVERSAL STEAMSHIP COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN

STATEMENT AS TO JURISDICTION

In the District Court of the United States for the Eastern District of Michigan

Civil Action No. 4259

DETROIT AND CLEVELAND NAVIGATION COMPANY, GREAT LAKES TRANSIT CORPORATION, AND NICHOLSON UNIVERSAL STEAMSHIP COMPANY, PLAINTIFFS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, T. J. MCCARTHY STEAMSHIP COMPANY AND AUTOMOTIVE TRADES STEAMSHIP COMPANY, DEFENDANTS

JURISDICTIONAL STATEMENT BY DEFENDANTS UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

The defendant-appellants respectfully present the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment or decree in the above-entitled cause sought to be reviewed.

A. STATUTORY PROVISIONS

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47a (Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; as amended

by Urgent Deficjencies Act of October 22, 1913; c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, sec. 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68 29 Stat. 492; April 12, 1900, c. 191, sec. 35, 31 Stat. 85; April 30, 1900, c. 339, sec. 86, 31 Stat. 158; March 3, 1909, c. 269, sec. 1, 35 Stat. 838; March 3, 1911, c. 231, secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, sec. 2, 38 Stat. 804, February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

B. THE STATUTE OF A STATE, OR THE STATUTES OR TREATY OF THE UNITED STATES, THE VALIDITY OF WHICH IS INVOLVED

The validity of a statute of a state, or of a statute or treaty of the United States, is not involved.

C. DATE OF THE JUDGMENT OR DECREE SOUGHT TO BE REVIEWED AND THE DATE UPON WHICH THE APPLICATION FOR APPEAL WAS PRESENTED

The decree sought to be reviewed was entered on November 20, 1944. The petition for appeal

was presented and allowed on December 18, 1944, together with the assignment of errors.

D. NATURE OF CAUSE AND RULINGS BELOW

This is an appeal from a final decree of a three-judge District Court of the United States for the Eastern District of Michigan, Southern Division, entered November 20, 1944, annulling and setting aside an order of the Interstate Commerce Commission. Such action was taken pursuant to the court's opinion filed September 29, 1944. The order in question was entered by the full Commission on March 7, 1944, in proceedings known as *T. J. McCarthy Steamship Company Common Carrier Application,* Docket No. W–592, and *Automotive Trades Steamship Company Common Carrier Application,* Docket No. W–729. These proceedings arose on applications by the above two companies for certificates of public convenience and necessity under the "grandfather" clause of Section 309 (a) or under Section 309 (c) of the Interstate Commerce Act (49 U. S. C. 909 (a) and 909 (c)), to operate as common carriers by water in the transportation of motor vehicles between Detroit, Michigan, on the one hand, and ports on Lake Erie and Lake Superior, on the other. In its report and said order of March 7, 1944, the Commission found that future public convenience and necessity required the proposed operation, and directed that an appropriate certificate issue to McCarthy Steamship Company

(hereinafter referred to as McCarthy) for itself, and as managing agent of Automotive Trades Steamship Company. Subsequently, on July 3, 1944, the full Commission denied petitions for reconsideration filed by protestants.

On July 3, 1944, the present suit to set aside this order was brought against the United States and the Commission pursuant to the provisions of the Urgent Deficiencies Act of October 22, 1913 (28 U. S. C. 41 (28), 43–48) by Detroit and Cleveland Navigation Company (hereinafter referred to as D. & C.), Great Lakes Transit Company, and Nicholson Steamship Company. These companies are competing water carriers which were protestants before the Commission. McCarthy and Automotive Trades Steamship Company were also named as party defendants. The case was submitted on final hearing on August 28, 1944, before a specially constituted three-judge court.

From the Commission's report it appears that defendant McCarthy owns three vessels, which for several years prior to 1942, when production of automobiles for civilian use ceased, were especially equipped for transporting motor cars, were chartered to plaintiff D. & C. and were used by the latter in transporting a very substantial number of automobiles between Detroit and Lake Erie ports. McCarthy had exclusive solicitation rights with respect to such transportation by D. & C.

Because the Commission found that the operations performed on the "grandfather" date, January 1, 1940, with these vessels were those of D. & C. rather than of McCarthy, it appropriately denied McCarthy's "grandfather" clause application under the doctrine of *United States* v. *Rosenblum Truck Lines*, 315 U. S. 50.

As also shown in the report, the war has brought about many changes in this picture. McCarthy has terminated its charter agreement with D. & C., reconverted its vessels into bulk freighters, and in its own right, has since operated these vessels in the grain trade and occasionally in the transportation (on the top or spar deck) of motor vehicles for military use, under temporary operating authority granted by the Commission. Furthermore, a large percentage of plaintiffs' vessels formerly used in the auto trade has been requisitioned by the Government and withdrawn from service on the Great Lakes.

Under these circumstances, the Commission granted McCarthy's application under Section 309 (c), making the ultimate finding that the future public convenience and necessity required its operations. In support of this ultimate finding it found that before the war there had been a definite need for McCarthy's vessels in the Lake Erie trade, and that there would be a like need for them in that service when production of motorcars for civilian use was resumed. It stated

that witnesses representing manufacturers producing the bulk of the automobiles at Detroit testified as to this future need, not only as to transpotration between Detroit and Lake Erie ports, but also as to Lake Superior ports. It further found that at certain times prior to 1942 there had been insufficient vessels, even including McCarthy's boats, fully to meet the needs of shippers, and that similar situations might likely arise upon the resumption of normal production of motorcars. As to the possibility of D. & C.'s and the other plaintiff's securing new vessels after the war, the Commission found that there was much uncertainty as to the length of time that might be required to procure and place in operation on the Great Lakes additional vessels adapted to their needs. McCarthy, however, so the Commission found, had intended to reconvert its vessels to auto carriers on the termination of the present emergency, and could do so without much difficulty, having retained the necessary materials and equipment for that purpose.

The court set aside the Commission's order, not for lack of evidence, but solely on the ground that its subordinate findings did not support its ultimate finding of public convenience and necessity. This is apparent in the following excerpt from the court's opinion:

> The question of law submitted to the court is that the action of the Commission

is not supported by evidence. The plaintiffs, however, rest their case upon the evidentiary findings of the Commission and submit the proposition that these findings do not support the ultimate finding and conclusion of the Commission as to public convenience and necessity. There is, therefore, no need for the court to give detailed consideration to the record made before the Commission[1] and we confine ourselves mainly to the facts developed in its report.

On the question of findings the court held, in particular, that there was a fatal gap between the Commission's finding of need in the past for McCarthy's vessels, when operated in the D. & C. service, and its conclusion that the future operations of McCarthy in its own right with these vessels were needed. It observed that there was no bridging finding, which it apparently considered essential, that if D. & C. had not chartered the vessels of McCarthy there was no other carrying capacity it could have acquired.

E. GROUNDS UPON WHICH IT IS CONTENDED THE QUESTIONS ARE SUBSTANTIAL

We think there are substantial grounds for concluding that the court was in error and that there was no fatal gap in the Commission's findings. This gap appears to be bridged by certain statements in the Commission's report, which

[1] This record before the Commission was introduced in evidence before the court.

clearly indicate that the Commission thought D. & C. and the other plaintiffs would face delays in replacing McCarthy's vessels and other vessels, delays which McCarthy, as an independent operator in the future, would not, to such an extent, face. Thus, the Commission found that "there is admittedly much uncertainty as to the length of time that may be required [by plaintiffs] to procure and place in operation on the Great Lakes additional vessels adapted to their needs"; that "unquestionably the public interest will be adversely affected if, after the production of automobiles is resumed, protestants [i. e., plaintiffs] are delayed in acquiring the additional facilities which they indicated will be necessary to meet the increased demands for transportation"; and that McCarthy "owns three vessels which can be reconverted into motor vehicle carriers without much difficulty." In any event, the Commission's conclusion can be supported, entirely apart from the above, by its finding, completely neglected by the District Court, that "at certain times during the period prior to 1942, there were insufficient vessels, including applicants' vessels, fully to meet the needs of shippers of motor vehicles, and similar situations may likely arise at such times in the future after the war upon the resumption of normal production of motor vehicles." It is evident, despite the court's protestations to the contrary, that its action results from its having sub-

stituted its judgment for that of the Commission on a factual question entrusted, under well settled principles, to the expert judgment of the Commission and not to that of the courts.

This is particularly evident in the court's effort to minimize the uncertainties which the Commission found as to the possibility of plaintiffs' acquiring new vessels, and the ill effect which the Commission found a delay in such acquisition would have upon the public interest. Thus the court flatly states that "the shipping tonnage available before the emergency will again be available when the emergency passes," and states that the Commission fails to take note of the period required for automobile manufacturers to reconvert their plants to civilian production, "the length of which, and its effect upon the national economy, has been so much a subject of public discussion that no court or administrative body can fail to take note of it."

We think, too, that the questions here involved are important enough, in their relation to the post-war economy, to warrant consideration by the Supreme Court.

F. CASES SUSTAINING THE SUPREME COURT'S JURISDICTION OF THE APPEAL

United States v. *Baltimore & Ohio Railroad Company*, 293 U. S. 454;

Florida v. *United States*, 282 U. S. 194;

Beaumont, Sour Lake & Western Railway Company v. *United States*, 282 U. S. 74;

Ann Arbor Railroad Company v. *United States*, 281 U. S. 658;

Louisville & Nashville R. R. Co. v. *United States*, 238 U. S. 1;

Interstate Commerce Commission v. *Union Pacific Ry. Co.*, 222 U. S. 1;

New England Division Case, 261 U. S. 184;

Alton R. Co. v. *United States*, 287 U. S. 229;

United States v. *Lowden*, 308 U. S. 225;

Hudson & Manhattan R. Co. v. *United States*, 313 U. S. 98;

Interstate Commerce Commission v. *Railway Labor Executives Association*, 315 U. S. 373; and *Interstate Commerce Commission* v. *Hoboken Manufacturers' Railroad Co.*, 320 U. S. 368.

G. OPINION AND DECREES OF THE DISTRICT COURT

Appended to this statement are (1) copies of the opinion of the District Court dated September 29, 1944 and (2) copies of the final decree of said court sought to be reviewed, dated November 20, 1944.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated December 18, 1944.

CHARLES FAHY,
Charles Fahy,
Solicitor General.

JOHN C. LEHR,
John C. Lehr,
United States Attorney.

WENDELL BERGE,
Per R. L. P.
Wendell Berge,
Assistant Attorney General.

ROBERT L. PIERCE,
Robert L. Pierce,
Special Assistant to the Attorney General,
For the United States of America.

DANIEL W. KNOWLTON,
Daniel W. Knowlton,
Chief Counsel.

DANIEL H. KUNKEL,
Daniel H. Kunkel,
GORDON C. LOCKE,
Gordon C. Locke,
Attorneys,
For the Interstate Commerce Commission.

SPARKMAN D. FOSTER,
Sparkman D. Foster,
Foster, Yost & Lott,
3466 Penobscot Building,
Detroit, Michigan,
For defendants, T. J. McCarthy Steamship Company and Automotive Trades Steamship Company.

CIVIL ACTION #4259

In the District Court of the United States for the Eastern District of Michigan, Southern Division

DETROIT AND CLEVELAND NAVIGATION COMPANY, A MICHIGAN CORPORATION; GREAT LAKES TRANSIT CORPORATION, A NEW YORK CORPORATION, AND NICHOLSON UNIVERSAL STEAMSHIP COMPANY, A DELAWARE CORPORATION, PLAINTIFFS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, T. J. MCCARTHY STEAMSHIP COMPANY, A MICHIGAN CORPORATION, AND AUTOMOTIVE TRADES STEAMSHIP COMPANY, A MICHIGAN CORPORATION, DEFENDANTS

BILL IN EQUITY TO ENJOIN, SET ASIDE, AND ANNUL AN ORDER OF THE COMMISSION

Decided September —, 1944

Before SIMONS, Circuit Judge; TUTTLE and O'BRIEN, District Judges.

SIMONS, Circuit Judge. The plaintiffs are common carriers of motor vehicles by water upon the Great Lakes, authorized as such by the Interstate Commerce Commission under § 309 (a) of the Interstate Commerce Act, and were protestants in hearings before the Commission upon the application of the defendant steamship companies, to operate as common carriers of motor

vehicles between Detroit, Michigan, and ports on Lake Erie and Lake Superior. The hearings resulted in an order of the Commission granting a certificate of convenience and necessity to the defendants under § 309 (e) of the Act; and this order the plaintiffs now seek to enjoin, set aside, and annul. The case was submitted to a court of three judges in pursuance of § 47, Title 28, U. S. C. A., and it is stipulated that the cause is submitted as upon final hearing upon the record made before the Commission.

The court is fully advised in respect to the finality of factual determinations made by the Commission if supported by evidence, *Merchants Warehouse Co.* v. *U. S.*, 283 U. S., 501, 508, and understands that "the judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body". *Mississippi Valley Barge Co.* v. *U. S.*, 282 U. S., 282, 286. The court is also aware of the basic purpose of the Transportation Act of 1920, in that "it recognized that preservation of the earning capacity and conservation of the financial resources of individual carriers is a matter of national concern; that the property employed must be permitted to earn a reasonable return; that the building of unnecessary lines involves a waste of resources, and that the burden of this waste may fall upon the public; that competition between carriers may result in harm to

the public as well as in benefit * * *". *Texas & Pacific R. R. Co.* v. *Gulf, Colorado and Santa Fe R. R. Co.*, 270 U. S., 266, 277, also *Texas & New Orleans R. R. Co.* v. *North Side Belt R. R. Co.*, 276 U. S., 475, 479. The court also assumes that the underlying purpose of the original Act is likewise the purpose of the amendment thereto made by the Act of September 18, 1940, covering water carriers and now incorporated as Part III, Chapt. 12 of the Act.

Section 309 (a), being § 909 of Title 49, U. S. C. A., contains the so-called "grandfather clause", providing, in effect, that where an applicant for a certificate of public convenience and necessity was in bona fide operation as a common carrier by water on January 1, 1940, and continued in such operation to the date of the application, the applicant shall be entitled to such certificate as a matter of right.

Section 309 (c) provides that the Commission may grant such certificate also to any applicant fit, willing, and able to perform the service proposed, if such service will be required by the present or future public convenience and necessity.

Originally the applications of the defendant carriers were for certificates either under the "grandfather clause" of § 309 (a) or under § 309 (c), and sought authority as common carriers between Detroit and Lake Erie ports. Upon oral argu-

ment, however, before a division of the Commission, the applicants indicated that they also desired authority to serve ports on Lake Superior. Their applications under § 309 (a) were denied by the division on the ground that the applicants were not in bona fide operation as common or contract carriers by water on January 1, 1940. This finding was affirmed by the Commission. As to the applications under the provisions of § 309 (c), the division concluded that the evidence submitted was not sufficient to support a finding that present or future public convenience and necessity required operation by applicants, but upon hearing by the Commission an ultimate finding was made that the operations proposed will be consistent with the public interest and the national transportation policy declared in the Act, and notwithstanding protest that the order sought extended the scope of authority beyond the scope of the application, the certificate authorized included authority to serve Lake Superior ports.

The question of law submitted to the court is that the action of the Commission is not supported by evidence. The plaintiffs, however, rest their case upon the evidentiary findings of the Commission, and submit the proposition that these findings do not support the ultimate finding and conclusion of the Commission as to public convenience and necessity. There is, therefore, no need for the court to give detailed consideration to the

record made before the Commission, and we confine ourselves mainly to the facts developed in its report. These disclose that applicants' president, T. J. McCarthy, was affiliated with the D. & C. Company, in a soliciting capacity, for about 9 years prior to 1942; that from 1937 to 1942 two of his vessels were chartered by the D. & C. to transport motor vehicles from Detroit to Lake Erie ports, and a third vessel for the same purpose, was chartered during the 1940 and part of the 1941 season. All three vessels were originally bulk carriers but were later equipped to carry motor vehicles. Because of the cessation of manufacture of motor vehicles for civilian use, all three vessels were reconverted to bulk freighters prior to the 1943 navigation season. The applicants, however, have retained the equipment and parts originally installed, and are prepared to reconvert their vessels into motor vehicle carriers upon termination of the war. Meanwhile, some use had been made of their vessels for carriage of military vehicles to Great Lake ports during 1942, and similar shipments were in prospect for 1943 at the time of the hearing, such vehicles being carried on the spar decks while the vessels were being operated in bulk transportation.

At the time of the final hearing no vessels of the motor vehicle carrying type were in operation on the Great Lakes, and a large percentage of all types of vessels formerly so used had been re-

quisitioned by the government and withdrawn from service on the lakes, although since then the applicants have advised the Commission that the government was returning to the plaintiff Great Lakes Transit Corporation, 4 of the 14 vessels of that carrier which had been requisitioned. The applications were supported by witnesses from motor manufacturing companies, the substance of whose testimony was that the vessels of the applicants were essential to the transportation of automobiles in the past, that it would not have been possible, without them, for the water carriers to have handled the automobiles offered for transportation in 1940 and 1941, and that these vessels would again be needed when normal production of motor vehicles is resumed. There was also evidence that there had been some delay in the transportation of motor vehicles by water during the 1941 season. During the seasons 1939 to 1941, inclusive, the vessels of the applicants, chartered by the D. & C. Company, handled from 64 to 74 percent of the motor vehicles carried by that company prior to the cessation of their manufacture. The peak period for the movement of automobiles on the Great Lakes during those years, commenced in September or early October, with the production of new models. In 1940 and 1941 there were delays ranging from 2 to 4 days in the loading of automobiles from the docks at Detroit, incident to the congestion of such traffic,

and because of such delays it was necessary, at times, to move automobiles by motortrucks.

Before the discontinuance of the manufacture of motor vehicles for civilian use, the plaintiff Nicholson operated four vessels specially designed for the purpose of transportation of motor vehicles. Of these, one was converted during 1941 into a combination motor-vehicle and bulk carrier. It also transported automobiles from Detroit to Duluth on the spar decks of its 8 bulk carriers, but its vessels had not been operated to capacity for the transportation of automobiles. It gave evidence that there had been no delay in its shipments, and that its service was satisfactory. At the time of the hearing it operated 9 vessels, 5 of which were owned and operated for the federal government. It had, however, begun negotiations to reacquire these vessels at the end of the war, intending to re-engage in the transportation of motor vehicles when their manufacture is resumed, and to make available adequate transportation for such tonnage as may be offered to it.

The plaintiff Great Lakes Transit Corporation, had been engaged in the transportation of passenger and freight on the Great Lakes for more than 25 years; one of its vessels was specially equipped to carry motor vehicles, and it had also transported such vehicles on its combination passenger and freight or package and freight vessels. It expects to resume transportation when vessels

again become available, and to provide sufficient vessels to meet the needs of shippers. Since the hearing, four of its vessels have been returned to it by the government, and it had advised the Commission that these vessels would be in operation before the close of the 1943 season.

Like the other plaintiffs, the D. & C. Company intends, as far as it is capable of doing so, to make its former facilities, or their equivalent, available for motor vehicles at the termination of the war. At the time of the hearing it was operating 5 combination passenger and package freight vessels, the government having requisitioned two others, one a combination passenger and freight vessel and the other an automobile carrier, and the charters on the three automobile carriers owned by McCarthy's companies had been canceled or relinquished.

Upon these evidentiary facts the Commission found that there had been a definite need for the applicants' vessels in the transportation of motor vehicles between Detroit and Lake Erie ports prior to the cessation of the manufacture of motor vehicles for civilian use. It also found that there was reasonable certainty that there would be a like need for them in that service at the termination of the war, or when normal production and shipment by water of motor vehicles for civilian use was resumed. It based this ultimate finding upon the evidence of Detroit auto-

mobile manufacturers, that such vessels would be needed in the future, not only in transportation between Detroit and Lake Erie ports, but also between Detroit and Lake Superior ports, and that in the absence of applicants' vessels it would not have been possible for the water carriers to have handled the automobiles offered for transportation in 1940 and 1941, and that with the resumption of manufacture, the use of applicants' vessels would be necessary in the handling of such traffic. It also found that refusal of the applicants' right to initiate operations with their own vessels might seriously impair their investment in such vessels, and while such fact was not controlling, denial of the applications would deprive shippers of necessary transportation facilities, and not be in the public interest. Moreover, even though the protestants expected that considerable tonnage would be available at the termination of the war, there was much uncertainty as to the length of time that might be required to procure and place in operation on the Great Lakes, additional vessels adapted to their needs; that replacement by the D. & C. of its passenger and freight vessels alone would not adequately meet the needs of the service for the reason that during a substantial part of the navigation season the vessels would again be used for the transportation of passengers and their automobiles, leaving little carrying capacity for other motor vehicles, and

this would also be true of some of the vessels of the Great Lakes Transit Corporation. The three vessels of the applicants could be reconverted into motor vehicle carriers without much difficulty, because the necessary materials and equipment for that purpose had been retained, and it was their intention to reconvert upon termination of the emergency. The conclusion was therefore reached that the public interest would be adversely affected if, after production of automobiles is resumed, the protestants were delayed in acquiring additional vessels concededly necessary to meet the expected increase in the demand for transportation.

In respect to the finding of the Commission that the vessels of the applicants were needed to supply the needs of automobile manufacturers for transportation in the period '39 to '41, the plaintiffs point out that this finding can mean no more than that their carrying capacity was required, and not that the specific vessels belonging to the applicants were required. This, the brief on behalf of the government and the Commission, appears to concede, in the statement, "The past extensive operations of these boats on Lake Erie, even though by the D. & C. Company, clearly showed that there was a public need for the carrying capacity represented by them". This interpretation of the Commission's finding being established, the point is now made that in the

absence of any showing by the applicants that their vessels were the only vessels available to the carriers to meet the transportation requirements of the automobile companies beyond that furnished by their own vessels, and in the absence of a showing that the future needs of the automobile companies for such carrying capacity can be met only by the vessels of the applicants, there is no evidence to sustain the Commission's ultimate finding that the public's convenience and necessity requires a grant to the applicants of common carrier rights. To put it more plainly, they say there is a gap in the evidence not bridged by any other evidentiary finding which necessitates a conclusion that the Commission's determination is unsupported. With this we are compelled to agree. Not only is there no finding to the effect that if the D. & C. had not chartered the vessels of the applicants there was no other carrying capacity it could have acquired, but the record to which we are cited establishes the contrary.

When McCarthy was testifying as to his negotiations with the D. & C., he asserted that he had asked its Freight Traffic Manager, "if, in the event sufficient business was developed in accordance with an agreement we earlier had, would they not put on the boats that he had purchased rather than chartering more outside boats from some other company, and he said, 'Oh, yes,

they would'." McMillan, General Traffic Manager of the D. & C. Company, testified that if they had not obtained the ships of the defendant companies "there were many other places they could have been readily obtained". There was to this statement no contradiction. It would seem to be clear, accepting the Commission's finding of future needs based upon the past need for carrying capacity, that the shipping tonnage available before the emergency will again be available when the emergency passes, even if we are not permitted to take judicial notice of the tremendous increase in the American Merchant Marine, in all categories, since the beginning of the war.

It must be remembered that with the single exception of the transitory delays which occurred at the peak of the 1940–41 seasons, the water carrier service accorded the automobile manufacturers by the plaintiffs, was entirely adequate, and, as was said in *U. S.* v. *Rosenbloom Truck Lines*, 315 U. S., 50 at 54, "It was the common carriers who offered the complete transportation service to the general public and the shipper". The present applicants offered no such service, and it was on this ground that their application, under the "grandfather clause", was denied. Whether it is economical and in the public interest to expect or require water carriers to maintain, throughout the navigation season, the carrying capacity needed for the peak load in September

or early October, we have no occasion to inquire, and the answer is within the competency and, if upon evidence, within the exclusive prerogative of the Commission. It must be observed, however, that the full carrying capacity of the three vessels of the applicants was utilized during the periods in question, and that the grant of a certificate of convenience and necessity to the applicants will not add to the total carrying capacity of carriers engaged in water transportation, anything beyond what was available during the periods of delay, and there is no showing that the applicants intend or are able to add to their tonnage when they become authorized as common carriers. If it is proposed that the applicants acquire additional capacity, it is but added demonstration that such tonnage is or will be available to existing carriers.

The effect of the Commission's finding and order is to introduce new and competing carriers into a field adequately served, without the definite need for the services being shown, and this collides with the clearly defined purpose of the Transportation Act already indicated. While in arriving at this conclusion we give no weight to the argument of plaintiffs that past need offers no basis for judgment of future requirements since the economic era which is to follow a world upheaval may be subject to circumstances that no one can foresee, and so is entirely conjectural,

we likewise reject, as conjectural, the conclusion of the Commission that the public interest will be adversely affected if, after the production of automobiles is resumed, the protestants are delayed in acquiring additional facilities. This conclusion fails to take note of the period required for automobile manufacturers to reconvert their plants to civilian production—an interim which has given manufacturers, labor, and the public, such grave concern, and the length of which, and its effect upon the national economy, has been so much a subject of public discussion that no court or administrative body can fail to take note of it. The effect of a denial of the application, upon the investment of the applicants in their vessels, is conceded by the Commission to be without controlling force. If we correctly understand the purpose of the Transportation Act, it is neither controlling nor even mildly persuasive, for, as we understand it, the Commission, in considering an application, is concerned only with the public interest.

It is true that in *U. S.* v. *Rosenbloom Truck Lines,* supra, there was involved only an application under the "grandfather clause" of the Motor Carrier Act of 1935, (49 Stats. 543, 552, 49 U. S. C. 309 (a)), while here we are now concerned with an application for certificates as new carriers, but the order of the Commission and its finding of convenience and necessity, are so in-

separably based upon the experience of the applicants in operating their boats under charter to an existing carrier, that the observation of the court, in the cited case, "the result would be to create in this case two services offering transportation to the public when there had been only one on the grandfather date", becomes apposite. It is true that the court added, "without allowing the Commission to determine if the additional service was in the public interest". Here the Commission did make that determination, but almost solely on grounds advanced in support of a certificate under the "grandfather clause".

We find ourselves, therefore, in accord with the four dissenting members of the Commission, including its chairman, when they say, "the fact that the applicants' vessels were used as they were to carry automobiles prior to the present emergency and may be needed for that service when the production of automobiles is resumed, does not warrant the conclusion that there will be need for the operation of such vessels by applicants as a new carrier in the field. That will not increase the amount of service formerly provided", and also when they say, "The decision of the majority is based upon too many assumptions and suppositions to be sound as a matter of law".

Upon the question of the Lake Superior rights proposed to be given to the applicants, it would appear that the plaintiffs were given sufficient op-

portunity to present proofs with respect to that issue even though it was not submitted to the Commission in the original applications. In view of the wide latitude accorded the Commission in regulating its procedure and freeing it of the technical requirements of pleadings and proofs, and the failure adequately to show prejudice, we are not persuaded that the order of the Commission, if valid, is too broad.

It follows from our discussion that the order of the Commission authorizing the defendant companies to operate as common carriers of motor vehicles between Detroit and ports on Lake Erie and Lake Superior, will be enjoined, set aside, and annulled, without prejudice, however, to the consideration of new applications when automobile manufacture is resumed and the public interest in their transportation can be adequately appraised under a peace economy, and without prejudice to the continuance or renewal of temporary authority.

It is so ordered.

CHARLES C. SIMONS,
United States Circuit Judge.

ARTHUR J. TUTTLE,
United States District Judge.

ERNEST A. O'BRIEN,
United States District Judge.

In the District Court of the United States for the Eastern District of Michigan, Southern Division.

Civil Action No. 4259

DETROIT AND CLEVELAND NAVIGATION COMPANY, ET AL., PLAINTIFFS

vs.

UNITED STATES OF AMERICA, ET AL, DEFENDANTS

FINAL DECREE SETTING ASIDE AND ANNULLING REPORT AND ORDER OF INTERSTATE COMMERCE COMMISSION

At a session of said Court held in the Federal Building, Detroit, Michigan, on the 20th day of November, A. D. 1944.

Present: CHARLES C. SIMONS, Circuit Judge; ARTHUR J. TUTTLE, District Judge; ERNEST A. O'BRIEN, District Judge.

The above entitled case having come on for final hearing on August 28, 1944, before a three-judge court, as required by the Urgent Deficiencies Act of October 22, 1913, and the case having been heard upon the complaint, the answers of defendants thereto, the entire record before the Interstate Commerce Commission in the proceedings known as Docket No. W–592, "*T. J. McCarthy Steamship Company, Common Carrier Application*" and No. W–729, "*Automotive Trades Steamship Company, Common Carrier Application,*" and the written and oral argument of counsel; and the Court on September 29, 1944, having filed

an opinion in said case, it is this 20th day of November, 1944,

Ordered, adjudged and decreed, that in accordance with said opinion of the Court, the certificate and order of the Interstate Commerce Commission entered on March 7, 1944, in the above-mentioned proceedings, by virtue of which defendants McCarthy Steamship Company and Automotive Trades Steamship Company were granted permanent operating authority as common carriers by water of motor vehicles between Detroit, Michigan, and ports on Lake Erie and Lake Superior, be and the same is hereby annulled and set aside.

CHARLES C. SIMONS,
United States Circuit Judge.
ERNEST A. O'BRIEN,
United States District Judge.

_____,
United States District Judge.

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United States of America

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 22

THE UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION,
T. J. McCARTHY STEAMSHIP COMPANY and
AUTOMOTIVE TRADES STEAMSHIP COMPANY,
Appellants,

vs.

DETROIT AND CLEVELAND NAVIGATION COMPANY,
GREAT LAKES TRANSIT COMPANY and
NICHOLSON UNIVERSAL STEAMSHIP COMPANY,
Appellees

On Appeal from the District Court of the United States
for the Eastern District of Michigan

BRIEF FOR THE T. J. McCARTHY STEAMSHIP COMPANY AND AUTOMOTIVE TRADES STEAMSHIP COMPANY

SPARKMAN D. FOSTER,
Attorney for Appellants T. J. McCarthy Steamship Company and Automotive Trades Steamship Company,
3466 Penobscot Building,
Detroit 26, Michigan.

Of Counsel:
FOSTER & LOTT,
3466 Penobscot Building,
Detroit 26, Michigan.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2-3
Statute involved	33-35
Statement	3-13
Specifications of errors to be urged	13-14
Summary of argument	14-16
Argument	17-32
I. The findings of the Commission justify the issuance of a certificate of convenience and necessity, it not being necessary for the Commission to find that appellees will not be able to obtain necessary equipment to meet future shipper demands	17-24
A. Under the statute the Commission is given broad administrative discretion in determining convenience and necessity and in the granting of a certificate in the public interest and the Court should not substitute its judgment for that of the Commission	17-22
B. It is not the policy, as declared by the Act, to prohibit new carrier operations in every instance in which the past service of present carriers has been adequate	22-24
II. The Commission was justified in its conclusion on the question of public convenience and necessity as this conclusion could reasonably be reached on the evidence of record	24-27

Page

III. The Commission's finds as to the failure of the appellees to render adequate service in the past are in themselves ample to support its findings of public convenience and necessity and of the certificate issued to the McCarthy Companies 27-31

IV. The Commission is justified on the record in granting authority to the McCarthy Companies to operate to Lake Superior ports.... 31-32

Conclusion 32

Appendix 33-35

CITATIONS

Cases:

American Trucking Association, Inc., v. United States, 65 Sup. Ct. Rep. 1499..... 24

Arco Auto Carriers, Inc., Extension—Kenosha-Racine, Wis. 26

Barrett Line, Inc., v. United States, 65 Sup. Ct. Rep. 1504 20

Chesapeake & Ohio Railway Co. v. United States, 283 U. S. 35..... 14-15

Davidson Transfer & Storage Co. v. United States, 42 F. Supp. 215, 219 (E. D. Pa.), affirmed 317 U. S. 587..... 24

Illinois C. R. Co. v. Interstate Commerce Commission, 206 U. S. 441, 51 L. ed. 1128, 27 Sup. Ct. Rep. 700 19

Indian Valley R. R. v. United States, 52 F. 2d 485, 487 (N. D. Calif.)..... 24

Interstate Commerce Commission v. Parker, 65 Sup. Ct. Rep. 1490..... 19

Interstate Commerce Commission v. Union Pacific R. R. Co., 222 U. S. 111..... 19

	Page
McLean Trucking Co. v. United States, 321 U. S. 67, 87-88	20
New Automobiles in Interstate Commerce, 259 I. C. C. 475	26-27
Pennsylvania R. R. Co. v. United States, 40 F. 2d 921, 925 (W. D. Pa.)	24
Powell v. United States, 300 U. S. 276, 287	19
Rochester Telephone Corp. v. United States, 307 U. S. 125, 146	27
Texas & Pacific R. R. Co. v. Gulf, Colorado & Santa Fe R. R. Co., 270 U. S. 266	7, 20

Statutes:

Act of December 20, 1944, 58 Stat. 827, U. S. C. A. Supp. title 50, sec. 645	12
Interstate Commerce Act:	
Part III, Sec. 309, as enacted by the Transportation Act of 1940, 54 Stat. 941, 49 U. S. C. 909(a), (b), (c), (e)	33-35
Secs. 206 and 207, 49 U. S. C. 306 and 307	18
Sec. 311(a), 49 U. S. C. 911(a)	
Second War Powers Act, Sec. 102(b), 50 U. S. C. 631(b)	12
Transportation Act of 1940, 54 Stat. 899	33

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OPINIONS BELOW

The opinion of the District Court (R. 82-90) is reported in 57 F. Supp. 81. The decision of Division 4 of the Interstate Commerce Commission (R. 22-25) is reported in 250 I.C.C. 550 and the decision of the full Commission on rehearing (R. 10-19) is reported in 260 I.C.C. 175.

JURISDICTION

The final decree of the three-judge District Court was entered on November 20, 1944 (R. 90). The petition for appeal was presented and allowed on December 18, 1944 (R. 91, 92). Probable jurisdiction was noted on February 26, 1945 (R. 647).

The jurisdiction of this Court is conferred by Section 210 of the Judicial Code, 36 Stat. 1150, as amended by the Urgent Deficiencies Act of October 22, 1913, 38 Stat. 208, 220 (28 U.S.C. 47a), and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 938 (28 U.S.C. 345).

QUESTIONS PRESENTED

(1) Whether the finding by the Commission under Section 309(c) of the Act certificating a new carrier should be set aside and annulled for failure to make a finding that existing carriers will be unable to obtain equipment and render adequate service.

(2) Whether it is the policy, as declared by the Interstate Commerce Act, to forbid issuance of a certificate to a new carrier in territories or over routes which have in the past been adequately served by existing carriers.

(3) Whether the Commission's findings and conclusions that the transportation service proposed by the McCarthy Companies will be required by present or future public convenience and necessity are supported by the evidence.

(4) Whether the Commission's findings as to the failure of existing carriers to render adequate service in the

past was such as to justify its finding as to public convenience and necessity of service by the McCarthy Companies.

(5) Whether the Commission was justified in broadening the scope of the operating rights requested in the written applications filed by applicants.

STATUTE INVOLVED

The provisions of the Interstate Commerce Act Involved herein are set out in the Appendix, *infra*, pp. 33-85.

STATEMENT

This is an appeal from the decree of a Statutory Court setting aside and annulling the final order of the Interstate Commerce Commission pursuant to its authority under Section 309(c) of Part III of the Interstate Commerce Act (49 U.S.C. 909 (c)) granting to T. J. McCarthy Steamship Company, for itself and as managing agent of Automotive Trades Steamship Company, hereinafter referred to as the "McCarthy Companies," a certificate of convenience and necessity for operating as common carriers in the transportation of motor vehicles between Detroit, Michigan and all other ports on Lake Erie and between Detroit, Michigan, and all ports on Lake Superior.[1]

[1]The companies had agreed that if their applications were granted a single certificate might be issued (R. 12).

The McCarthy Companies are both controlled by T. J. McCarthy (R. 12, 123). They obtained leave to intervene and participated in the District Court case in support of the Commission's order and have joined in this appeal (R. 78-9, 91-3).

The appellees, Detroit and Cleveland Navation Company, referred to herein as "D. & C.," Nicholson Universal Steamship Company, referred to herein as "Nicholson," and Great Lakes Transit Corporation, all operated through the season of 1941 in the transportation of motor vehicles on the Great Lakes as common carriers and at the final hearing before the Examiner of the Interstate Commerce Commission indicated their desire to again engage in this service when the production of automobiles for civilian use was resumed. The appellees opposed the applications of the McCarthy Companies before the Commission (R. 11) and instituted the present suit to set aside and annul the certificate issued by the Commission.

Applications were filed by the McCarthy Companies seeking grandfather rights in pursuance to the regulations of the Interstate Commerce Commission in May of 1941 and amended certificates were filed in October 1941 requesting certificates of public convenience and necessity under the so-called "grandfather" clause of Section 309(a) or under Section 309(c) of the Interstate Commerce Act (49 U.S.C. 909(a), 909(c)) for permission to operate as common carriers by self-propelled vessels in the transportation of motor vehicles between Detroit and Lake Erie ports (R. 10-11).

At the commencement of the hearing, the cases were consolidated and treated as one case. The original proposed report of the Examiner recommended the granting of a certificate for the transportation of motor vehicles as a common carrier on the Great Lakes. Division 4 of the

Commission filed a report (Commissioner Porter dissenting) finding that the facts did not warrant issuance of a certificate of convenience and necessity under either Section 309(a) or Section 309(c) of the Interstate Commerce Act (R. 21-5). Upon petition of the McCarthy Companies, the Commission postponed the effective date of this order and reopened the proceedings for further hearings (R. 11, 26). A further hearing was held at Detroit in June 1943 (R. 399-495) following which there was oral argument before the Commission (R. 506-530). The full Commission then filed its report in March 1944 (R. 10-19).

Because of the irregular route operations set out in the original application, the Commission held that it would consider the applications as requesting authority to operate between Detroit and Lake Superior ports, as well as between Detroit and Lake Erie ports (R. 10-1).

Division 4, in denying the certificate under the "grandfather" clause of Section 309(a) of the Act was upheld by the Commission. The Commission, however, on a review of the evidence previously taken and the evidence adduced at the further hearing found that the proposed service would be required by present and future public convenience and necessity and that the McCarthy Companies were fit, willing and able to perform the service and to conform to the requirements of Part III of the Act and of the rules and regulations thereunder and that such operations would be consistent with the public interest and the national transportation policy declared in the Act (R. 19).[2] A certificate was issued (R. 20-1) and the Commission subsequently denied petitions for reconsideration filed by the present appellees (R. 7-8, 73-4).

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[2]Commissioner Miller wrote his dissenting opinion in which he was joined by three other Commissioners expressing the view that future public convenience and necessity would not require the service proposed (R. 19-20).

The Commission found that the three vessels owned by the McCarthy Companies had been converted into automobile carriers;[3] that prior to 1942 the needs of shippers in such transportation were not adequately taken care of even with the use of the three McCarthy Companies' vessels by one of appellees; that they had been needed in the past; that there was reasonable certainty that they would again be needed when normal production of automobiles was resumed (R. 13-4, 17); that the McCarthy Companies had retained the most of their equipment which had been removed for conversion of the vessels back to bulk carriers for the transportation of grain and iron ore during the emergency and that the McCarthy Companies can convert the vessels back into automobile carriers without delay when needed for the transportation of automobiles (R. 12-17).

The Commission, in its report, deals in some detail with the changed conditions of the appellees due to the requisitioning and purchase by the Government of vessels from all three of the appellees and the conversion of former automobile carriers to bulk carriers (R. 15-6); the delays in the movement of automobiles by water between Detroit and other ports in 1940 and 1941 resulting in numerous complaints to the motor car manufacturers and the actual diversion of traffic to motor carriers (R. 14) and the uncertainty as to the time required for appellees to procure and place in operation vessels for the transportation of automobiles sufficient to adequately handle the traffic offered following the resumption of the manufacture of automobiles for civilian use (R. 17).

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[3]One of the vessels, the GEORGE W. MEAD, had been slightly changed, the other two vessels having been converted from bulk vessels to automobile carriers (R. 127) and had been used in the transportation of automobiles for a considerable period and having transported a high percentage of all automobiles transported by the D. & C., which company had had them under charter (R. 12-14).

The District Court set aside and annulled the Commission's certificate primarily on the basis that the evidentiary findings of the Commission did not support the ultimate conclusions of the Commission as to public convenience and necessity. The Court stated that there was no need for it to give detailed consideration to the record before the Commission and that it would confine itself mainly to the facts developed in the report (R. 83-4). The Court apparently was of the view that it was essential for the Commission to find that appellees would be unable, upon the resumption of the manufacture of automobiles for civilian use, to procure tonnage for the transportation of motor vehicles adequate to meet the anticipated demands.

The Court further found that the Commission's evidentiary findings are insufficient to support its ultimate findings that future public convenience and necessity will require the transportation service proposed by the McCarthy Companies (R. 87). The Court also rejected as "conjectural" the Commission's conclusion that the public interest would be adversely affected if, upon the resumption of automobile production, appellees delayed in acquiring the needed automobile tonnage (R. 88).

The Court further declared that "to introduce new and competing carriers into a field adequately served * * * collides with the clearly defined purpose of the Transportation Act already indicated" (R. 88), which "clearly defined purpose" refers to an excerpt from *Texas & Pacific R. R. Co. v. Gulf, Colorado & Santa Fe R. R. Co.*, 270 U. S. 266, quoted in the Court's opinion (R. 82-3).

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*The Court would appear to substitute its judgment for that of the Commission as to the adequacy of the service in view of the Commission's finding (R. 14) that cars were delayed two to four days and actually removed from the premises of appellees and shipped via motor truck because of the complaints of the receivers. The Court likewise apparently came to the conclusion, not justified by the record and the findings of the Commission, that these delays only occurred during the peak period (R. 88).

Here we believe it appropriate to call particularly to the attention of the Court some of the evidence before the Commission as the Commission in its report necessarily did not state in detail all of the evidence before it. A brief summary of some of this evidence should meet appellees contention (R. 6) that the Commission's findings as to convenience and necessity are "unsupported by evidence."

Automobiles were moved on the Great Lakes by conventional automobile carriers, combination passenger and freight vessels and on the decks of bulk vessels through 1940. Most of the bulk vessels were used in transporting to Lake Superior ports (R. 535, 549) but only a very small percentage of automobiles transported via vessel from Detroit were to Lake Superior ports ("Exhibit No. 2," R. 594). The bulk vessels were not available in 1941 and it was then apparent that there would be a shortage of available tonnage (R. 224-5). With service discontinued to Milwaukee and an additional carrier in service to Duluth, there were not sufficient vessels to handle the transportation to Lake Erie and Lake Superior ports (R. 225). The D. & C. passenger and package freight vessels transported a relatively small percentage of the new automobiles from the Detroit area. The amount of their capacity for new automobiles was restricted due to tourist automobiles (R. 106). Automobile carriers handle by far the larger portion of motor vehicles transported on the Great Lakes.[5]

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[5]During 1939, 1940 and 1941, respectively, 64%, 74% and 71% of the automobiles transported by D. & C. were on the vessels chartered by it from applicant (R. 17). The D. & C. had a fourth automobile carrier which did not transport tourist automobiles, but only new cars. The testimony in the present case indicates that the three appellees and the Minnesota Atlantic Transit Company, which was acquired in 1941 by Great Lakes Transit Corporation, prior to 1941 transported a large bulk of the automobiles.

T. J. McCarthy, President and principal stockholder in the McCarthy Companies, was associated with D. & C. in the capacity of solicitor from 1933 to 1941 and was in charge of the automobile division and dealt with the automobile shipping public (R. 128, 231-2, 242, 291). He was under agreement to devote his entire time to the business for which he received, as sole compensation, a commission based upon a percentage of the gross freight earned, it being his obligation to pay all expenses in connection with solicitation.[6] The agreement which by its terms was to expire at the close of the navigation season in 1942 was cancelled by mutual consent in February 1942 (Exhibit No. 22, R. 313-5). Through the season of 1941 D. & C. operated six combination passenger and freight vessels and four automobile vessels (R. 490, 540). All of the automobile vessels had been placed in service because of the solicitation efforts of Mr. McCarthy and three of the vessels were owned by the McCarthy Companies and were under charter to D. & C. (R. 106, 178). D. & C. had acquired, through Detroit and Cleveland Steamship Company, a wholly owned subsidiary, one carrier in 1934, but flatly refused later to invest in vessels to fill the growing need of Mr. McCarthy's solicitation (R. 178-80, 223, 279-80, 288, 292; Exhibit No. 23, R. 316-20).

To transport the automobiles which his solicitation had developed, three vessels were purchased by the McCarthy Companies, one of which had previously been used in the transportation of paper and tractors and was equipped with between decks and two others which were conventional bulkers and were converted at a cost of approximately $40,000.00 each. The MEAD was chartered to the D. & C. at the commencement of the 1936 season, the

[6]Exhibits 13, 15, 18, 19; R. 298-300, 302-4, 306-9. Offices were maintained for soliciting traffic from Detroit, Cleveland, Buffalo, New York, and Philadelphia (R. 176).

TREMAINE at the commencement of the 1937 season and the INGALLS commencing with the 1940 season.[7]

D. & C. did not convert its one automobile carrier into a bulk boat in the winter of 1941-1942, but simply laid it at the dock and it was subsequently requisitioned by the War Shipping Administration and sent to salt water for conversion for service there (R. 292, 540; Exhibit No. 33, R. 495). The Government also requisitioned one of the companies' large passenger steamers and converted it into an aircraft carrier (R. 477). D. & C. has not owned an automobile carrier since that time and following the termination of the agreement between the McCarthy Companies and the D. & C. has had no agreement of any kind with them by way of option or otherwise (R. 188; Exhibits No. 21, 22, A. 311-5).

The Examiner before whom the further hearing was held in June of 1943 permitted testimony of the General Manager of the D. & C. that he had been advised by the President that it was the plan of the D. & C. to equip itself, after the war, with automobile carrying vessels the equivalent of its former facilities (R. 489-90, 491-2).

Through 1941, Nicholson operated a fleet of twelve boats of which four were automobile carriers, the other eight being conventional bulk vessels which were sometimes used in transporting automobiles on deck to Lake Michigan and Lake Superior ports (R. 534-5). Five of the bulk vessels were chartered by Nicholson and the charters were not renewed after 1941 (R. 557). At the further hearing in June of 1943, it was operating nine vessels of which five, including all four of its former automobile carriers, were

[7] R. 107, 176, 189-90; Exhibits No. 17, 20, 21, 22, R. 305-6, 309-10, 312, 314.

owned by the Government and engaged in the transportation of bulk commodities (R. 407, 482-3).[5]

The Great Lakes Transit Corporation had operated on the Great Lakes since 1916 in the package freight trade. At the end of 1941 it had fourteen vessels, including one vessel equipped for the carrying of automobiles (R. 438-40, 442). It was never a real factor in the transportation of automobiles. In 1940, it transported less than 10% of approximately 263,000 of the automobiles transported by water alone from Detroit (R. 444, 594). In 1942 all of this company's vessels were requisitioned and removed from the Lakes for conversion into salt water ships (R. 437, 463; Exhibit No. 33, R. 495). This company offered testimony at the further hearing in June of 1943 that it intended to resume its former business when this should become possible, but admitted that no definite plans had been made (R. 439-40, 451).

Following the close of the testimony in June of 1943, it came to the attention of the attorney for the McCarthy Companies that four of the vessels which had been taken to the Gulf had been returned to the company and this fact was called to the attention of the Commission on brief and was confirmed by Great Lakes Transit Corporation counsel (R. 16). It has now come to the attention of counsel for the McCarthy Companies that these four vessels were later sold by Great Lakes Transit Corporation for transfer to alien flag and that the company presently owns no vessels. The McCarthy Companies, on the other hand, are in a position to reconvert their vessels to auto-

[5]Its former automobile carriers were the WOODRUFF, later named the FRED L. HEWITT (R. 258), SONOMA, CORALIA and CRESCENT CITY (R. 534). Its only other vessel with substantial automobile carrying capacity was the PENOBSCOT (R. 535). These five boats were all purchased by the Government and converted into bulk vessels (Exhibit No. 33, R. 495-6).

mobile carriers on short notice despite the fact that they have previously been engaged in the transportation of grain and iron ore (R. 188, 409). The vessels were used in the bulk trade in 1942, in 1943 the two larger vessels towing grain barges. It did have deck space for motor vehicles and in 1942 transported 950 trucks between Detroit and Buffalo for the Army (R. 402).[9] These vessels are owned free and clear of any liens and the steel beams, timbers and other equipment has been preserved so that they may be readily converted into automobile vessels (R. 403). The vessels were, as were most other automobile carriers, obsolete as bulk carriers during normal times and could not be profitably operated as bulk vessels (R. 405).

Witnesses representing manufacturers producing the bulk of the automobiles in Detroit testified as to the need in the future of the proposed service of the McCarthy Companies (R. 17). This testimony further disclosed that during 1940 and 1941 there were delays of two to four days in transporting automobiles from Detroit to Buffalo and Cleveland which caused a congestion at the docks at Detroit, many complaints and actually resulted in diversion of automobiles from water carriers to motor truck carriers.[10]

Mr. Brennan of the Chrysler Corporation testified that where automobiles were delivered to water carriers for shipment and not promptly shipped it was necessary to find other means because of its lack of space at the com-

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[9]This service was performed under temporary authority of the Commission (R. 13) and has been renewed and is still operating under the Second War Powers Act (as amended by the Act of December 20, 1944, 58 Stat. 827, U.S.C.A. Supp., Title 50, Sec. 645). The present temporary certificates expire on December 31, 1945.

[10]R. 14, 227, 233, 235, 238, 240, 243-4, 246-7, 254, 256, 268-71, 276, 434.

pany plants to store more than two days' production (R. 227). The testimony of numerous witnesses was to the effect that had the three McCarthy vessels not been available for the transportation of automobiles in 1941 that the facilities of the appellees would have been inadequate.[11]

SPECIFICATIONS OF ERRORS TO BE URGED

The District Court erred:

(1) In holding that the evidentiary findings of the Commission do not support the ultimate findings and conclusions of the Commission as to public convenience and necessity.

(2) In substituting its judgment for that of the Commission upon truly administrative matters.

(3) In holding that the decision of the Commission is based upon too many assumptions and suppositions to be sound as a matter of law.

(4) In holding that the effect of the Commission's findings and order is to introduce new and competing carriers into a field adequately served, without the definite need for the service being shown.

(5) In holding that the shipping tonnage available before the emergency will again be available when the emergency passes.

(6) In concluding that the Commission made its determination as to public convenience and necessity almost solely on the grounds advanced in support of a certificate under the "grandfather" clause.

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[11] R. 221, 228, 234, 237, 246, 259, 271, 277, 434-5.

(7) In holding as conjectural the conclusion of the Commission to the effect that public interest will be adversely affected if the protestants (appellees) are delayed in acquiring additional shipping facilities after the production of automobiles is resumed.

(8) In concluding that the order of the Commission was illegal and void and should be enjoined, set aside and annulled.

(9) In failing to dismiss the complaint.

SUMMARY OF ARGUMENT

For the purpose of clarity, the same numbered headings will be used in the summary of argument as are used in the argument of this brief, although the individual subheadings will not be repeated.

I.

A. From a complete reading of the opinion of the Court below, it would appear apparently that the Court undertook to and did substitute its judgment for that of the Commission. The Court clearly stating (R. 83): "The question of law submitted to the Court is that the action of the Commission was not supported by evidence." The Court then proceeded on an entirely different theory. It admittedly, without a review of the evidence before the Commission, set aside and annulled the order of the Commission.

B. The Court below placed a very narrow interpretation upon the policy of the Act and in doing so clearly went *contra* to the rulings of this Court. This Court in *Chesa-*

peake & Ohio Railway Co., v. United States, supra, said at page 42:

> "In the absence of a plain declaration to that effect, it would be unreasonable to hold that Congress did not intend to empower the Commission to authorize construction of new lines to provide for shippers such competing service as it should find to be convenient or necessary in the public interest."

Should the Commission follow the reasoning or policy of the Court below, it would be well nigh impossible to ever authorize a new transportation and appellees would, in effect, by obtaining their certificates have conferred upon them proprietary or exclusive right or rights in the use of the public waterways (the Great Lakes) in direct violation of Section 309(e) of the Act. See Appendix.

II.

The Court below, because of certain recitations made by the Commission in its report, came to the conclusion that the certificate of public convenience and necessity was granted primarily on evidence offered in support of the "grandfather" application. The testimony going to the failure of the then existing carriers to perform a proper or adequate service was all offered after an amended application had been filed seeking a certificate of convenience and necessity. The Commission was definite in pointing out that the McCarthy Companies had no "grandfather" rights, affirming Division 4 in that regard. It is submitted that under all of the evidence the Commission was clearly justified in finding a present need for service between Detroit and Lake Erie ports and a future need for service between Detroit and Lake Superior ports.

III.

In view of the testimony as to the failure of existing carriers to render an adequate service, the Commission was justified in its findings of public convenience and necessity and in the issuance of certificates to the McCarthy Companies. The Commission had before it the testimony that there had been long delays in forwarding automobiles from the docks of the existing carriers. There were many complaints from shippers and the situation became so acute that on a number of occasions automobiles were actually removed from the existing carriers' docks and shipped to destination via other means. The Commision, under the broad authority conferred upon it, certainly had the right to conclude that a new carrier should be certificated and that it was in the public interest that this be done.

IV.

It is submitted that from all the testimony adduced and from the amendments made in the applications that the Commission was justified in broadening the scope of the application to include operations between Detroit and Lake Superior ports. A great deal was made of this argument in brief before the Court below. It is submitted that the Court below was correct in saying (R. 89):

> "In view of the wide latitude accorded the Commission in regulating its procedure and freeing it of the technical requirements of pleadings and proofs, and the failure adequately to show prejudice, we are not persuaded that the order of the Commission, if valid, is too broad."

ARGUMENT

I.

THE FINDINGS OF THE COMMISSION JUSTIFY THE ISSUANCE OF A CERTIFICATE OF CONVENIENCE AND NECESSITY, IT NOT BEING NECESSARY FOR THE COMMISSION TO FIND THAT APPELLEES WILL NOT BE ABLE TO OBTAIN NECESSARY EQUIPMENT TO MEET FUTURE SHIPPER DEMANDS

A. Under the statute the Commission is given broad administrative discretion in determining convenience and necessity and in the granting of a certificate in the public interest and the Court should not substitute its judgment for that of the Commission.

It is apparent that the District Court has made a determination that it was incumbent upon the Commission to make a finding that the appellees will not be able to obtain the required facilities which the Commission has found they will need to meet the demands for the transportation of automobiles when their production is resumed and in the absence of such a finding there is no basis for the conclusion that the service of the McCarthy Companies will be required by future public convenience and necessity. This is clearly substituting the Court's judgment for that of the Commission and doing so on the narrow basis of the Commission's own findings and without a review of the testimony on which the Commission's findings and conclusions are based.

The Commission certainly had the right, from the prior refusal of D. & C. to invest any of its money in vessels, to come to the conclusion that there might be delay in that company acquiring facilities. The Commis-

sion had before it the clear testimony that the McCarthy vessels were available and that the equipment for their reconversion to automobile carriers had been saved and that the vessels could be converted back to automobile carriers with comparatively little delay. We contend that the clear language of Section 309(c) of the Act authorized the Commission to determine the question before it and that the Commission was justified, under the proofs, to grant the certificate and that the District Court in its opinion has interpreted the power of the Commission under this section in such a way as to clearly limit the power of the Commission. The construction is entirely too narrow and does not find support under the cases of this Court. Literally, the Court has said that future public convenience and necessity can never be found by the Commission without the Commission first determining that it is not possible for the existing carriers to perform the contemplated service. This presumably where the service has been inadequate in the past and under the normal conditions existing in the past, appellees did not render good service in 1940 and 1941.

The provisions of Part III of the Act have their counterpart in Part II which relates to motor carriers, the comparative provisions being Sections 206 and 207 of the Act (49 U.S.C.A. 306, 307). The Act was amended in 1940 and Section 1(18) of the Act relates to the extension of a line of a railroad or constructing a new railroad line.

Congress has granted to the Commission very broad authority to determine questions of fact and to grant certificates on a showing of public convenience and necessity and in the public interest and to carry out the national transportation policy as expressed in the Act. This Court has recognized this broad discretion for a

good many years. In *Interstate Commerce Commission v. Union Pacific Railroad Company*, 222 U. S. 111, the Court said:

> "In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling. 'The findings of the Commission are made by law *prima facie* true, and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience.' *Illinois C. R. Co. v. Interstate Commerce Commission*, 206 U. S. 441, 51 L. ed. 1128, 27 Sup. Ct. Rep. 700. Its conclusion, of course, is subject to review, but, when supported by evidence, is accepted as final; not that its decision, involving, as it does, so many and such vast public interests, can be supported by a mere scintilla of proof, but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order."

This case has been widely quoted and under the clear language of the case it would appear that the District Court was in error in setting aside and annulling the Commission's order without reviewing the testimony on which the Commission's findings and conclusions were based.

In the recent case of *Interstate Commerce Commission v. Parker*, 65 Supreme Court Reporter 1490, the Court said at page 1493:

> "The purpose of Congress was to leave to the Commission authoritatively to decide whether additional motor service would serve public convenience and necessity. Cf. *Powell v. United States*, 300 U. S. 276, 287. This, of course, gives administrative discretion to the Commission, cf. *McLean*

Trucking Co. v. United States, 321 U. S. 67, 87-88, to draw its conclusion from the infinite variety of circumstances which may occur in specific instances."

In *Barrett Line, Inc., v. United States*, 65 Supreme Court Reporter 1504, this Court made it plain that it would not substitute its judgment for that of the Commission in refusing to issue a certificate for a new operation by a water carrier and stressed the broad power of the Commission in relation to such applications.

The Court pointed out in *Texas & Pacific Railway Company v. G. C. & S. F. Ry. Co.*, 270 U. S. 266, at page 73, the functions of the Commission in dealing with public convenience and necessity for an extension of the railroad's line.

In the later case of *Chesapeake & Ohio Railway Company v. United States*, 283 U. S. 35, the Court said at page 42:

> "There is no specification of the considerations by which the Commission is to be governed in determining whether the public convenience and necessity require the proposed construction. Under the Act it was the duty of the Commission to find the facts and, in the exercise of a reasonable judgment, to determine that question."

A reading of the opinion of the District Court in the present case clearly demonstrates that that Court has not only placed a very narrow construction upon Section 309(e), but has attempted to limit the functions of the Commission. The Commission had before it the undisputed testimony that the appellees in 1941 had not performed what in their judgment was an adequate transportation service. The record is plain that there were unreasonable delays to Lake Erie and Lake Superior

ports in the shipment of new automobiles; this despite the fact that service had been discontinued to a principal Lake Michigan port (Milwaukee) in September 1941 and an additional carrier (Nicholson Transit Company) later held to be a common carrier was operating to Lake Superior ports; that there were numerous complaints about the delays and instances where motor vehicles were actually removed from the premises of the appellees and shipped by means of the motor truck to their destination.

The District Court admittedly, without reading the record, comes to an opposite conclusion from the Commission and actually holds that there was adequate service by existing carriers. The Commission, after a recitation of the facts, including the inadequacy of the service, concludes that public convenience and necessity and the public interest justify the issuance of a certificate.

The Court below clearly stated the question of law submitted to the Court saying (R. 83):

> "The question of law submitted to the court is that the action of the Commission is not supported by evidence."

This was the sense of the bill of complaint. The Court, nevertheless, points out:

> "The plaintiffs (appellees here), however, rest their case upon the evidentiary findings of the Commission, and submit the proposition that these findings do not support the ultimate finding and conclusion of the Commission as to public convenience and necessity."

The Court then says:

> "There is, therefore, no need for the court to give detailed consideration to the record made before the Commission, and we confine ourselves mainly to the facts developed in its report."

The Court then proceeds to place its own construction upon Section 309(c) by concluding that it is the policy of the Interstate Commerce Act to forbid new competition in any field which has been adequately served by the existing carriers (R. 88). We here respectfully state that the Court below did not give proper consideration to pertinent findings of the Commission in its report, but on the other hand ignored specific findings wholly justifying the ultimate conclusions of the Commission.

B. It is not the policy, as declared by the Act, to prohibit new carrier operations in every instance in which the past service of present carriers has been adequate.

It is believed that the Court is clearly wrong in placing so narrow a construction on Section 309(c). The Court, by placing its own interpretation upon the policy of the Act, raises the further question as to whether a certificate of public convenience and necessity would ever be proper with existing carriers giving adequate service. This Court in *Chesapeake & Ohio Railway Company v. United States, supra,* said at page 42:

> "In the absence of a plain declaration to that effect, it would be unreasonable to hold that Congress did not intend to empower the Commission to authorize construction of new lines to provide for shippers such competing service as it should find to be convenient or necessary in the public interest."

The Court further pointed out in the same case (pp. 42-43) that that portion of the Act relating to consolidation of railway properties "clearly discloses a policy on the part of Congress to preserve competition among carriers." It is contended that the foregoing views apply with equal force to motor carriers under Part II of the Act and

water carriers under Part III of the Act. Either are prohibited from commencing new operations without a certificate from the Commission on a finding of public convenience and necessity. It is not reasonable to assume that Congress intended to give to existing motor and water carriers more protection against any competition than it gave to the railroads. There is nothing in the Transportation Act of 1940 which would lead one to believe that there has been a change in the policy of Congress respecting new competition.

If the reasoning of the lower court was carried to its ultimate conclusion, there would have to be a breakdown in the transportation service in any particular field before a certificate could be issued to a new carrier. The clear language of 309(c) would appear to refute any such contention.

The McCarthy Companies had contracts with the D. & C., one of the appellees, who had no investment in the vessels and who requested and obtained a cancellation of the charters and solicitation agreement when it was thought that there would be no motor vehicles to transport in 1942. It is difficult to see how the investment of the appellees in their own equipment could be damaged or impaired by the McCarthy Companies operating their own vessels instead of having them operated by one of the appellees. While automobile vessels do require a substantial investment, it is not as permanent nor does it involve such large expenditures as an extension of railroad facilities by new construction.

The General Manager of the D. & C. was careful to say that they would furnish facilities as in the past and the witness on behalf of Nicholson spoke of using the decks of other vessels not owned by it, which practice was discontinued after Part III of the Act became effective

(R. 224-5). The Great Lakes Transit Corporation no longer has any vessels. The policy of the Commission with respect to certifying new carriers is familiar to the Court, the Court having considered two such cases in the October Term of 1944. We refer to *Interstate Commerce Commission v. Parker*, *supra*, and *American Trucking Association, Inc., v. United States*, 65 Sup. Ct. Rep. 1499.[12]

If the Commission should follow as a policy the ruling of the District Court then existing carriers might well claim exclusive right of ways over certain water routes prohibited by Part III of the Act. Any common carrier under the Act, whether rail, motor or water, is privileged or authorized to continue service, but this in nowise works as a limitation upon the authority of the Commission to grant similar rights or to introduce new carriers as they are required by public convenience and necessity and in the public interest. *Pennsylvania R. R. Co. v. United States*, 40 F. 2d 921, 925 (W.D. Pa.); *Indian Valley R. R. v. United States*, 52 F. 2d 485, 487 (N.D. Calif.). Cf., *Davidson Transfer & Storage Co. v. United States*, 42 F. Supp. 215, 219, (E.D. Pa.), affirmed 317 U. S. 587.

II.

THE COMMISSION WAS JUSTIFIED IN ITS CONCLUSION ON THE QUESTION OF PUBLIC CONVENIENCE AND NECESSITY AS THIS CONCLUSION COULD REASONABLY BE REACHED ON THE EVIDENCE OF RECORD

The District Court apparently arrived at the conclusion that although a certificate of public convenience and necessity was issued that this was done primarily on a showing

[12]The Commission in *American Trucking Association, Inc., v. United States*, *supra*, actually rejected evidence offered to show the economic effect on existing carriers if the new operating rights were granted.

made on the "grandfather" feature of the application. The Commission pointed out in its report, affirming Division 4 in its denial of "grandfather" rights, what it considered to be the pertinent testimony on which to grant a certificate of public convenience and necessity.

Upon Division 4 denying the application, a petition for further hearing, reconsideration and oral argument was filed and the full Commission postponed the effective date of the order and granted a rehearing presumably because of the showing made as to the changed conditions between the time of the original hearing and the decision of the Commission. At the time of the further hearing, the Great Lakes Transit Corporation had none of its fourteen ships. The D. & C. had lost one of its combination passenger and freight vessels, as well as its only automobile carrier and had terminated, by mutual consent, its charter arrangement on the three McCarthy boats. Nicholson had voluntarily sold all of its former automobile carriers and had terminated the charters on vessels which it had operated in 1941 and with the production of motor vehicles greatly curtailed the appellees had not had the facilities to even transport the limited number which the armed services needed to move between Detroit and Buffalo. This was, no doubt, the basis of the Commission's findings that there was a present need for the operation between Detroit and Lake Erie ports (R. 14). The testimony as to when any of these carriers could obtain vessels for transportation of motor vehicles was highly speculative although the record was clear that the McCarthy Companies were then rendering and had rendered transportation service and were in a position within a very short time to have their three vessels reconverted and placed in that trade.

It would appear that the District Court, when its opinion is read in its entirety, clearly undertakes to draw

conclusions and weigh the evidence and arrive at a different answer than did the Commission, all based upon, as it states, the evidentiary findings of the Commission as contained in its report and not upon the evidence which was before the Commission and from which it made its findings and conclusions. One of the questions which the District Court has raised by its opinion is whether the Commission has the authority under the Act to come to a conclusion that public convenience and necessity in the public interest may require facilities adequate to meet future transportation needs and if they should so decide whether the Court may set aside their order on the basis that it was conjectural.

The language used in the Act has been in certain State Acts for many years and Congress will be assumed to have known its meaning. The Commission is to determine what "will be" required by "future" public convenience and necessity. Division 5 of the Commission in *Arco Auto Carriers, Inc., Extension—Kenosha-Racine, Wis.*, not printed, but cited in the report of the full Commission (R. 18) in granting a certificate to the McCarthy Companies said:

> "While the curtailment in the production of automobiles during the national emergency results in a temporary diminution in the demand for the transportation of such commodities, it has not been our policy to deny an application because of the changed conditions resulting from the war, if the evidence otherwise supports a grant thereof. Normal conditions including the demand heretofore experienced are bound to recur and applicant should not then be expected to incur the cost and delay of a further proceeding."

We believe it reasonable to suppose that members of the Commission were familiar with the facts developed in *New*

Automobiles in Interstate Commerce, 259 I. C. C. 475. In that case an exhaustive study was made by the Commission on the movement of new automobiles and there the Commission pointed out the heavy movement by water and the reasons for it. It is submitted that under the record made the Commission was wholly justified in granting the certificate; that there was "a rational basis" for the conclusion of the Commission and that the order of the Commission being supported by proof it is not within the province of a Court to proceed in the matter as "the judicial function is exhausted." See *Rochester Telephone Corporation v. United States*, 307 U. S. 125, 146.

The District Court, by setting aside and annulling the order and certificate of the Commission, has squarely presented to this Court the question as to whether the language "will be" and "future," as used in the Act, have any meaning or are mere surplusage. The case was exhaustively briefed and argued with appellees here as protestants and a petition for reconsideration of the final determination of the Commission was denied. It is submitted that the Commission, under the proofs, was clearly within its rights in ordering the certificate on the basis of public convenience and necessity and in the public interest.

III.

THE COMMISSION'S FINDINGS AS TO THE FAILURE OF THE APPELLEES TO RENDER ADEQUATE SERVICE IN THE PAST ARE IN THEMSELVES AMPLE TO SUPPORT ITS FINDINGS OF PUBLIC CONVENIENCE AND NECESSITY AND OF THE CERTIFICATE ISSUED TO THE McCARTHY COMPANIES

The Commission on all of the testimony, including testimony offered by certain of the appellees in the Nicholson Transit Company Case (M-732) which was incorporated

by reference, made the finding that appellees had not provided adequate service. The Commission in its findings said (R. 14):

> "In 1940 and 1941, there were delays ranging from 2 to 4 days in the loading of the automobiles from the docks at Detroit incident to the congestion of such traffic and the inability of the water carriers to handle it promptly, which caused delays in delivery at final destination and resulted in numerous complaints from automobile dealers and distributors. Because of such delays, it was necessary at times to move by motor truck automobiles which had been previously delivered to the docks at Detroit for water transportation."

There is evidence in the record to support these findings. It should be borne in mind that the McCarthy vessels were under charter to appellee D. & C. during the season of 1941. Even with these vessels available and in the proposed service, there were not ample vessel facilities to meet the shipping demands of the public. This despite the fact that appellees, Nicholson and Great Lakes Transit Corporation, apparently in an attempt to serve Lake Erie and Lake Superior ports had discontinued service to Milwaukee, Wisconsin. The Commission further said (R. 17):

> "At certain times during the period prior to 1942, there were insufficient vessels, including applicants' vessels, fully to meet the needs of shippers of motor vehicles *and similar situations may likely arise at such times in the future after the war upon the resumption of normal production of motor vehicles.*" (Italics supplied.)

Following the passage of the Transportation Act of 1940, a large number of the so-called bulk operators would no longer transport automobiles on the decks of their vessels to the head of the Lakes (R. 224-5). They had formerly transported cars for other carriers, particularly appellees

Nicholson and Great Lakes Transit Corporation. In 1941, the Nicholson Transit Company entered this field and its application was bitterly protested by appellee Nicholson Universal Steam Company.[13]

Congress clearly intended that the National Transportation Policy should be to promote "adequate" service and to develop a national transportation system "adequate to meet the needs of the commerce of the United States." The Commission had a right to conclude from all of the evidence that appellees had not furnished facilities adequate to meet the needs of the shippers prior to 1942 and in all probability would not furnish them at some later date despite their declared intentions of doing so.

The Commission doubtless had in mind that while it might well be to the advantage of appellees to have automobiles waiting on their docks to be transported with their vessels all fully loaded during the production season, it was not in the public interest for shippers to be required to await the convenience of appellees for the shipment of their automobiles, and on occasions to actually have to divert their traffic to other means of transportation because of the failure of appellees to transport them with reasonable dispatch resulting in numerous complaints from consignees.

From all of the evidence produced and after argument before the full commission at which counsel for the McCarthy Companies and all three of the appellees participated, the full Commission, after a rather full recital of the facts, stated (R. 19):

"We further find that the present and future public convenience and necessity require operation

[13]These companies are not connected financially in any way, William Nicholson, President of the present Nicholson Transit Company, having been one of the organizers of the original Nicholson Transit Company later merged with the Nicholson Universal Steamship Company.

by applicants as common carriers by water of motor vehicles by self-propelled vessels in interstate or foreign commerce between Detroit and Lake Erie ports and between Detroit and Lake Superior ports; that applicants are fit, willing and able properly to perform such operations and to conform to the requirements of Part III of the Act and of our rules and regulations thereunder; and *that such operations will be consistent with the public interest and the national transportation policy declared in the act.*" (Italics supplied.)

It is submitted that the matter was fully heard before the Commission and that the issues were sharply in dispute. Shipper testimony, with the exception of two dealers who had been served by appellee Nicholson, was all to the effect as to the need of the service. The Commission found from actual operations in 1942 that there was a present need for the service between Detroit and Lake Erie ports (R. 14). This was no doubt based upon the actual movement during that year of some 950 motor vehicles for the army which appellees admittedly did not have the facilities to move. The conclusion of the Commission as to future need to Lake Superior ports was in its sound administrative judgment and, therefore, should not be set aside and annulled. There certainly is rational basis for the conclusions of the Commission and where this exists its findings and conclusions should not be disturbed. *Rochester Telephone Co. v. United States*, 307 U. S. 125, 146. See also *Chesapeake & Ohio Railway Co. v. United States*, 283 U. S. 35, 42; *McLean Trucking Co. v. United States*, 321 U. S. 67, 87-88.

IV.

THE COMMISSION WAS JUSTIFIED ON THE RECORD IN GRANTING AUTHORITY TO THE McCARTHY COMPANIES TO OPERATE TO LAKE SUPERIOR PORTS

At the original hearing of the applications in Washing-
on in September 1941, certain of appellees objected to any
estimony on public convenience and necessity on the
rounds that such testimony could not be offered under an
pplication based on "grandfather" rights (R. 132). Sub-
equently, amended applications were filed and at the open-
g of the adjourned hearing at Detroit, motion was made
amend the application to include, in addition to the ports
etween Detroit and Lake Erie ports, transportation over
e irregular routes shown in Automotive Trades Steam-
ip. Company's amended application. Unfortunately,
rough stenographical error, reference was made to Ex-
bit 20 rather than 27 which showed these routes, or more
roperly speaking the ports between which cargoes had
en transported (R. 169-70, Exhibit No. 27, R. 326-7).

No objection was made at that time by any of the pro-
stants although they all had been given copies of the ex-
bit. That all of the parties knew that the McCarthy
mpanies claimed that the application had been broad-
ed was borne out by the oral argument before Division 4
. 22).

At the rehearing granted by the Commission at which
ther proof was taken it was stated explicitly that the
Carthy Companies sought authority to operate between
troit and Lake Superior ports (R. 410-11, 41 . 427). Ap-
lees offered extensive proof in opposition to Lake Supe-
not only by the incorporation into the record of the
imony taken in the Nicholson Transit Company Case

(W-732), but at the further hearing (R. 536-46, 548-51, 593-6, 599-601). The full Commission, in its report, authorized operations to Lake Superior ports (R. 11-12). In the oral argument and on brief before the District Court the broadening of the application was stressed. The Court, however, stated (R. 89):

> "In view of the wide latitude accorded the Commission in regulating its procedure and freeing it of the technical requirements of pleadings and proofs, and the failure adequately to show prejudice, we are not persuaded that the order of the Commission, if valid, is too broad."

CONCLUSION

It is submitted that there was substantial proof as to the need of the services of the McCarthy Companies and that there was a rational basis for the findings and conclusions of the Commission and that, therefore, the decree of the District Court setting aside and annulling the order of the Commission should be reversed and the District Court directed to dismiss the complaint.

Respectfully submitted,

SPARKMAN D. FOSTER,
Attorney for Appellants T. J. McCarthy Steamship Company and Automotive Trades Steamship Company.

FOSTER & LOTT,
Of Counsel.

APPENDIX

The Transportation Act of 1940, 54 Stat. 899, inserts before Part I of the Interstate Commerce Act the following declaration of National Transportation Policy:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preference or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Section 309 of Part III of the Interstate Commerce Act, as enacted by the Transportation Act of 1940, 54 Stat. 941, 49 U. S. C. 909 (a), (b), (c), (e), provides in part as follows:

> (a) Except as otherwise provided in this section and section 311, no common carrier by water shall

engage in transportation subject to this part unless it holds a certificate of public convenience and necessity issued by the Commission: *Provided, however,* That, subject to section 310, if any such carrier or a predecessor in interest was in *bona fide* operation as a common carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made and has so operated since that time (or, if engaged in furnishing seasonal service only, was in *bona fide* operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in subsection (b) of this section and prior to the expiration of one hundred and twenty days after this section takes effect. * * *

(b) Application for a certificate shall be made in writing to the Commission, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission shall, by regulations, require.

(c) Subject to section 310, upon application as provided in this section the Commission shall issue a certificate to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if the Commission finds that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent

authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied.

* * * * *

(e) No certificate issued under this part shall confer any proprietary or exclusive right or rights in the use of public waterways.

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No. 22

In the Supreme Court of the United States

OCTOBER TERM, 1945

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, T. J. McCARTHY STEAMSHIP COMPANY AND AUTOMOTIVE TRADES STEAMSHIP COMPANY, APPELLANTS

v.

DETROIT AND CLEVELAND NAVIGATION COMPANY, GREAT LAKES TRANSIT COMPANY AND NICHOLSON UNIVERSAL STEAMSHIP COMPANY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	3
Specification of errors to be urged	19
Summary of argument	19
Argument:	
I. The Commission's determination as to the public convenience of the McCarthy Companies' proposed service is not invalidated by the absence of a positive finding that appellees will be unable to obtain additional facilities needed to meet future transportation demands	22
A. The statute vests in the Commission a wide range of administrative discretion in determining public convenience and necessity	22
B. It is not the policy of the Interstate Commerce Act to forbid new carrier operations in every case in which the past service of the existing carriers has been adequate	28
II. The Commission's finding that the transportation service proposed by the appellant steamship companies will be required by future public convenience and necessity rests upon a rational basis, as disclosed by its report, and is supported by substantial evidence	36
III. The Commission's findings as to the inadequacy of the appellees' past service are in themselves sufficient to support its finding of the public convenience and necessity of operations by the McCarthy Companies	46
IV. The inclusion of Lake Superior ports within the operating authority granted to the McCarthy Companies was not erroneous	49
Conclusion	51
Appendix	52

665874—45——1

CITATIONS

Cases: Page

Alton R. R. Co v. *United States*, 315 U. S. 15 34

American Trucking Associations, Inc., v. *United States*, No. 558, October Term, 1944 31

Arco Auto Carriers, Inc., Extension—Kenosha—Racine, Wis. (not printed), decided by Div. 5 of I. C. C. December 18, 1943 41

Barrett Line, Inc., v. *United States*, No. 630, October Term, 1944 25

Chesapeake & Ohio Ry. Co. v. *United States*, 283 U. S. 35 .. 26, 28, 48

Chicago, St. P. M. & O. Ry. Co. v. *United States*, 322 U. S. 1 .. 50, 51

Colonial Airlines, Inc., et al., Atlantic Seaboard Operation, 4 C. A. B. 552 33

Davidson Transfer & Storage Co. v. *United States*, 42 F. Supp. 215, affirmed 317 U. S. 587 32

Indian Valley R. R. v. *United States*, 52 F. 2d 485 32

Inland Motor Freight v. *United States*, 36 F. Supp. 885 .... 32, 34

Interstate Commerce Commission v. *Parker*, No. 507, October Term, 1944 ..... 25, 31, 47

Manufacturers Ry. Co. v. *United States*, 246 U. S. 457 47

McLean Trucking Co. v. *United States*, 321 U. S. 67 48

Meeker & Company v. *Lehigh Valley R. R.*, 236 U. S. 412 .. 47

Missouri Pac. Transp. Co. Extension—Natchez-New Orleans, 9 M. C. C. 712 33

New Automobiles in Interstate Commerce, 259 I. C. C. 475 .. 12, 41, 42

Newtex S. S. Corp. Common Carrier Application, 260 I. C. C. 418 42

New York Central Securities Co. v. *United States*, 287 U. S. 12 25

Pan-American Bus Lines Operation, 1 M. C. C. 190 33

Pennsylvania R. R. Co. v. *United States*, 40 F. 2d 921 32

Rochester Telephone Corp. v. *United States*, 307 U. S. 125 .. 35, 43, 48

Santa Fe Trail Stages, Inc., Common Carrier Application, 21 M. C. C. 725 34

Texas & Pacific Ry. Co. v. *G. C. & S. F. Ry. Co.*, 270 U. S. 266 ..... 10, 25, 26

Transcontinental & Western Air, Inc., et al., Additional North-South California Services, 4 C. A. B. 373 32

United States v. *Baltimore & Ohio R. R. Co.*, 293 U. S. 454 .. 47

United States v. *Louisiana*, 290 U. S. 70 47

Virginia Stage Lines, Inc., v. *United State*, 48 F. Supp. 79 .. 34

Statutes:

Act of December 20, 1944, 58 Stat. 827, 50 U. S. C. App., Supp. IV, sec. 645 17

Statutes—Continued Page
Interstate Commerce Act:
National Transportation Policy 25, 29, 47, 52
Sec. 1 (18), 49 U. S. C. 1 (18) 24
Sec. 14 (1), 49 U. S. C. 14 (1) 47
Sec. 206, 49 U. S. C. 306 24
Sec. 207, 49 U. S. C. 307 24
Sec. 309, 49 U. S. C. 909 ..... 12, 19, 22, 23, 24, 26, 27, 53
Sec. 310, 49 U. S. C. 910 54
Sec. 311 (a), 49 U. S. C. 911 (a) 17
Sec. 316 (c), 49 U. S. C. 916 (c) 47
Second War Powers Act, 56 Stat. 176:
Sec. 103, 50 U. S. C. App., Supp. IV, sec. 631 17
Sec. 1501, 50 U. S. C. App., Supp. IV, sec. 645 17
Transportation Act of 1940, 54 Stat. 899 ..... 25, 29, 47, 52
Miscellaneous:
H. Rep. No. 591, 59th Cong., 1st sess. 47

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THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, T. J. MCCARTHY STEAMSHIP COMPANY AND AUTOMOTIVE TRADES STEAMSHIP COMPANY, APPELLANTS

v.

DETROIT AND CLEVELAND NAVIGATION COMPANY, GREAT LAKES TRANSIT COMPANY AND NICHOLSON UNIVERSAL STEAMSHIP COMPANY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The opinion of the district court (R. 82–90) is reported in 57 F. Supp. 81. The decision of Division 4 of the Interstate Commerce Commission (R. 22–25) is reported in 250 I. C. C. 550 and the decision of the full Commission on rehearing (R. 10–20) is reported in 260 I. C. C. 175.

JURISDICTION

The final decree of the three-judge district court was entered on November 20, 1944 (R. 90). The petition for appeal was presented and allowed on December 18, 1944 (R. 91, 92). Probable jurisdiction was noted on February 26, 1945 (R. 647).

The jurisdiction of this Court is conferred by Section 210 of the Judicial Code, 36 Stat. 1150, as amended by the Urgent Deficiencies Act of October 22, 1913, 38 Stat. 208, 220 (28 U. S. C. 47a), and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 938 (28 U. S. C. 345).

QUESTIONS PRESENTED

1. Whether a determination by the Interstate Commerce Commission under Section 309 (c) of the Interstate Commerce Act that service by a new carrier will be required by the future public convenience and necessity is invalidated by the absence of a positive finding that the existing carriers will be unable to obtain the additional facilities necessary for meeting future transportation demands.

2. Whether it is the policy of the Interstate Commerce Act to forbid new competition in any field which has in the past been adequately served by the existing carriers.

3. Whether the Commission's finding that the transportation service proposed by the appellant

steamship companies will be required by future public convenience and necessity rests upon a rational basis, as disclosed by its report, and is supported by substantial evidence.

4. Whether the Commission's findings as to the inadequacy of the appellees' past service are in themselves sufficient to support its finding as to the public convenience and necessity of service by the appellant steamship companies.

5. Whether the Commission improperly permitted a broadening of the scope of the operating rights requested in the written applications filed with the Commission.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix, *infra*, pp. 52–55.

STATEMENT

This is an appeal from a decree of a three-judge district court setting aside an order of the Interstate Commerce Commission issued pursuant to Section 309 (e) of Part III of the Interstate Commerce Act (49 U. S. C. 909 (e)) granting to T. J. McCarthy Steamship Company and Automotive Trades Steamship Company a certificate of convenience and necessity to operate as common carriers in the transportation by water of motor vehicles from Detroit, Michigan, to ports

on Lake Erie and Lake Superior.[1] The companies receiving this certificate are both controlled by T. J. McCarthy (R. 12, 123) and will be referred to as the McCarthy Companies. They intervened in the district court in support of the Commission's order and have joined in the appeal to this Court (R. 78–79, 91–93).

Appellees Detroit and Cleveland Navigation Company (referred to herein as D. & C.), Nicholson Universal Steamship Company (referred to herein as Nicholson) and Great Lakes Transit Company have operated in the past on the Great Lakes as common carriers of motor vehicles and have expressed the intention of resuming this service when automobile production recommences (R. 15–16). They opposed before the Commission the granting of any certificate of public convenience and necessity to the McCarthy Companies (R. 11) and brought the present suit to set aside the certificate issued by the Commission (R. 1–9).

The McCarthy Companies instituted the proceeding before the Commission by filing applications which, as amended in October 1941, sought certificates of public convenience and necessity

[1] The Commission's certificate runs to T. J. McCarthy Steamship Company, for itself and as managing agent of Automotive Trades Steamship Company (R. 20–22). The two companies had agreed that, if their applications were granted, a single certificate in this form might be issued (R. 12).

under the "grandfather" clause of Section 309 (a) or under Section 309 (c) of the Interstate Commerce Act (49 U. S. C. 909 (a), 909 (c), Appendix, *infra*, pp. 53, 54), to operate as common carriers by water in transporting motor vehicles between Detroit and other Lake Erie ports (R. 10–11). The applications were consolidated and, after the taking of evidence (R. 98–294, 532–593), Division 4 of the Commission filed a report (Commissioner Porter dissenting) finding that the facts did not warrant issuance of a certificate of convenience and necessity under either Section 309 (a) or Section 309 (c) of the Act (R. 21–25). After entry of an order denying the applications for a certificate, the Commission, upon the petition of the McCarthy Companies, postponed the effective date of this order and reopened the proceedings for further hearings (R. 11, 26). Following the taking of additional evidence in June 1943 (R. 399–495), the full Commission filed its report in March 1944 (R. 10).

The Commission, on the applicants' motion (R. 418), treated the applications as requesting authority to transport motor vehicles between Detroit and Lake Superior ports as well as between Detroit and Lake Erie ports (R. 10–11). The Commission affirmed the action of Division 4 in denying a certificate under the "grandfather" clause of Section 309 (a) of the Act, but it found upon review of the evidence that the transportation service proposed by the McCarthy Companies

865874—45——2

will be required by future public convenience and necessity and that the companies had therefore met the requirements for the issuance of a certificate of convenience and necessity under Section 309 (c) of the Act (R. 11–19).[2] Such certificate was then issued (R. 20–21) and petitions for reconsideration filed by the present appellees were denied (R. 57–8, 74–75, 77).

Among the subordinate findings of the Commission from which it concluded that public convenience and necessity require the granting of the requested operating authority, are the following:

The McCarthy Companies owned three vessels equipped as automobile carriers[3] which, prior to the cessation of the manufacture of motor vehicles for civilian use, were extensively used in transporting automobiles from Detroit to Lake Erie ports (R. 12, 14). These vessels have in the past been essential to such transportation; without them it would not have been possible for the water carriers to have handled the automobiles offered for transportation in 1940 and 1941; and there will be a like definite need for the service of these vessels when normal automobile production is resumed (R. 14, 17). The McCarthy Companies

[2] Four Commissioners dissented from the finding that future public convenience and necessity will require the service proposed by the McCarthy Companies (R. 19–20).

[3] Vessels with special equipment and structually designed for carrying automobiles (see R. 127) will be referred to as automobile carriers.

have retained all the equipment and parts necessary for reconverting their vessels into automobile carriers and the companies intend so to reconvert their vessels upon termination of the national emergency (R. 12, 17). Refusal of the requested grant of operating authority might seriously impair the investment of the McCarthy Companies in their vessels and would deprive shippers of necessary transportation facilities (R. 17).

At certain times prior to 1942 there were insufficient vessels, including those of the McCarthy Companies, fully to meet the needs of shippers of automobiles, and similar situations may likely arise in the future upon resumption of normal production of automobiles (R. 17). In 1940 and 1941 there were delays ranging from two to four days in the loading of automobiles from the docks at Detroit incident to the congestion of such traffic and the inability of water carriers to handle it promptly, which caused delays in delivery at final destination and resulted in numerous complaints, and because of such delays it was necessary at times to move by motor truck automobiles which had been previously delivered to the docks at Detroit for water transportation (R. 14). No automobile carriers were in operation on the Great Lakes at the time of the hearing and a large percentage of all types of vessels formerly used in the transportation of motor vehicles have been requisitioned by the Government (R. 13). Re-

placement by D. & C. of its combination passenger and freight vessels alone will not adequately meet the needs for service when conditions become normal, and this will also be true of the combination passenger and freight vessels operated by Great Lakes Transit Company (R. 17). Although considerable tonnage is expected to be available at the termination of the war, there is uncertainty as to the length of time that may be required to procure and place in operation on the Great Lakes additional vessels adapted to the needs of automobile transportation (*ibid.*).

The public interest will be adversely affected if, after the production of automobiles is resumed, appellees are delayed in acquiring the additional facilities which, as they indicate, will be necessary to meet the increased demands for transportation (R. 18). Grant of temporary operating authority to the McCarthy Companies will not meet the requirements of future public convenience and necessity (*ibid.*).

It thus appears that the Commission, in considering the future needs of automobile transportation by vessels upon the Great Lakes, primarily had in mind and found that the resumption of automobile manufacture would require prompt and large-scale water transportation. The Commission, having found that the facilities owned by the McCarthy Companies had been utilized in the pre-war transportation and that,

notwithstanding such use, the total water-carrying facilities had been at times inadequate to meet traffic demands, proceeded to incorporate these factors in its ultimate judgment of future need. Likewise, the Commission found that the public interest required prompt availability of facilities following termination of the war. It measured the respective abilities of the appellees and the McCarthy Companies to reconvert their vessels into automobile carriers and found that the McCarthy Companies would be able to reconvert their vessels promptly but that there was grave doubt as to the ability of appellees to do so.

Appellees attacked the Commission's order in the court below upon the theory that the Commission's evidentiary findings were legally insufficient to suport its ultimate finding as to public convenience and necessity, and this was the basis upon which the district court rendered its decision (R. 83–84). It set aside the Commission's order upon the ground that, in the absence of a finding that appellees will be unable after the war to procure automobile-carrying tonnage adequate to meet then existing transportation demands, the Commission's evidentiary findings are insufficient to support its ultimate finding that future public convenience and necessity will require the transportation service proposed by the McCarthy Companies (R. 87). The court also rejected as "conjectural" the Commission's con-

clusion that the public interest will be adversely affected if, upon resumption of automobile production, appellees are delayed in acquiring the needed additional automobile-carrying tonnage (R. 88). And the court declared that "to introduce new and competing carriers into a field adequately served * * * * collides with the clearly defined purpose of the Transportation Act [of 1920] already indicated" (R. 88). The "clearly defined purpose" refers to an excerpt from *Texas & Pacific Ry. Co.* v. *Gulf, Colorado & Santa Fe Ry. Co.*, 270 U. S. 266, quoted earlier in the opinion[5] (R. 82–83).

A review of the evidence serves to show the solid foundations upon which the Commission's

[4] The court apparently made its own determination that delays in transportation during peak periods of automobile production, as found by the Commission (R. 14), did not render appellees' prior service inadequate. The court pointedly raised the question whether it is economical or in the public interest to expect or require water carriers to maintain the carrying capacity needed for the period of peak load (R. 88).

[5] The quoted excerpt is as follows (270 U. S. at p. 277):

> It [the railroad policy introduced by the Transportation Act of 1920] recognized that preservation of the earning capacity, and conservation of the financial resources, of individual carriers is a matter of national concern; that the property employed must be permitted to earn a reasonable return; that the building of unnecessary lines involves a waste of resources and that the burden of this waste may fall upon the public; that competition between carriers may result in harm to the public as well as in benefit * * *.

subsidiary findings and its ultimate finding of public convenience and necessity rest.

Three types of vessels have been used for transporting automobiles on the Great Lakes: automobile carriers, combination passenger and package freight vessels, and bulkers, *i. e.*, boats designed to carry bulk commodities. Bulkers are used for carrying automobiles to Lake Superior ports (R. 535, 549) but only from 10% to 12% of the automobiles shipped by water from Detroit have gone to these ports (Ex. No. 2, R. 594). Combination passenger and package freight vessels also carry a relatively small proportion of the automobiles shipped by water from the manufacturing plants in and near Detroit. D. & C., which operates vessels of this type (R. 105), appears to have carried on them only about 10% of its total shipments of automobiles other than tourist cars;[6] indeed, because of the tourist cars which these vessels transport, their "capacity for new automobiles is in a great many cases absolutely nil" (R. 106). Automobile carriers handle the balance of the waterborne shipments and are thus the

[6] Of the total number of automobiles (other than tourist cars) carried by D. & C. in 1940 and 1941, over 70% were shipped on the three automobile carriers which it chartered from the McCarthy Companies (Ex. 25, R. 321). Assuming that D. & C.'s fourth automobile carrier transported an additional 20%, this would mean that only about 10% of the automobiles (other than tourist cars) which D. & C. carried moved by its combination passenger and package freight vessels.

principal means used for transporting automobiles on the Great Lakes.[7]

The record shows that the three appellee companies engaged in automobile transportation on the Great Lakes on and prior to January 1, 1940. Of the three companies thus entitled, under the "grandfather" clause of Section 309 (a), to continue such operations, appellees D. & C. and Nicholson are the chief factors in the business.[8]

The story of D. & C.'s automobile-transportation business is primarily that of T. J. McCarthy and the McCarthy Companies. From 1933 to 1941, inclusive, McCarthy was, under successive agreements with D. & C., its exclusive agent for soliciting automobile traffic, and all dealings by shippers of automobiles, as to operation, rates and

[7] In *New Automobiles in Interstate Commerce*, 259 I. C. C. 475, which was a general investigation by the Commission of the rates and practices of railroads and motor carriers applicable to interstate transportation of new automobiles, the Commission said (p. 482):

> Most of the automobiles shipped over the Great Lakes move in ships designed and built for this particular traffic. They are driven off the docks directly onto the ships and driven off the ships at destination, the loading and unloading operations being simple and fast.

[8] In 1940, Nicholson's shipments of automobiles from Detroit alone were 135,813 (Ex. 3, R. 594), D. & C.'s total shipments (other than tourist cars) were 104,864 (Ex. 25, R. 321), and total shipments by Great Lakes Transit Company were about 23,000 (R. 444).

everything else, were with McCarthy rather than D. & C. (R. 128, 231–232, 242, 291). The agreements provided that he should devote his full time to the business, should receive as sole compensation a commission on the automobiles transported, and should pay all the expense of employing others to assist him in soliciting traffic (Exs. 13, 15, 18, 19; R. 298–300, 302–304, 306–309).[9] The last of these agreements was to remain in effect until the close of the 1942 navigation season but was cancelled by mutual consent in February 1942 (Ex. 22, R. 313–315).

Prior to 1942 D. & C. was operating six combination passenger and freight vessels and four automobile carriers (R. 490, 540). The carriers had been put into operation by D. & C. as they were required to meet the needs for automobile transportation developed by McCarthy (R. 106, 178). D. & C. had purchased one carrier in 1934 but it later refused to invest further in carriers or to aid the McCarthy Companies in doing so, and the additional carriers required for the business were supplied solely through McCarthy's efforts (R. 178–180, 223, 279–280, 288, 292; Ex. 23, R. 316–320). To meet these transportation needs, three vessels purchased by the McCarthy Companies were converted by them into automobile carriers

[9] McCarthy maintained offices for soliciting automobile traffic in Detroit, Cleveland, Buffalo, New York and Philadelphia (R. 176).

at a cost of about $40,000 each and were chartered to D. & C., one from the beginning of the 1936 season, one from the beginning of the 1937 season, and one for the seasons of 1940 and 1941 (R. 107, 176, 189–190; Exs. 17, 20, 21, 22, R. 305–306, 309–310, 312–313, 314–315).

D. & C. no longer controls any automobile carrier. Since February 1942 it has had no charter for the McCarthy Companies' vessels, no option to charter them, and no agreement of any kind with the McCarthy Companies (R. 188; Exs. 21, 22, R. 311–315) and the one automobile carrier owned by D. & C. has been requisitioned by the Government and removed to salt water (R. 292, 540; Ex. 33, R. 495).[10] D. & C.'s general manager testified that the president of the company had advised him that D. & C. intended to equip itself after the war with automobile-carrying facilities equivalent to its former facilities (R. 489–490, 491–492).

Prior to 1942 Nicholson operated a fleet of twelve boats of which four were automobile carriers and eight were bulkers used or capable of being used for carrying automobiles westbound and bulk commodities eastbound (R. 534–535). Five of the bulkers were chartered by Nicholson and it did not renew the charters for 1942 (R.

[10] The Government has also taken over one of D. & C.'s passenger steamers and converted it into an aircraft carrier (R. 477).

557). In June 1943 it was operating nine boats, of which five, including all four of its automobile carriers, had been purchased by the Government and were then engaged in the bulk trade carrying bulk commodities (R. 407, 482–483).[11] It had a verbal understanding with an official of the War Shipping Administration, but no definite agreement, to be allowed to buy back these boats from the Government when the shipping emergency is over (R. 483, 486). The company believes that it will be able to take care of automobile traffic offered to it in the post-war period as the situation may unfold from month to month or year to year (R. 485).

Great Lakes Transit Company has operated on the Great Lakes since 1916 in the package freight business, and in 1942 it had fourteen boats, including one automobile carrier (R. 438–440, 442). The record does not show how many automobiles it carried from Detroit, but its total shipment of automobiles between any ports of the Great Lakes was about 23,000 in 1940 compared with total water shipments in 1940 from Detroit alone of approximately 263,000 automobiles (R. 444, 594). In 1942 the Government requisitioned all of its

[11] Nicholson's automobile carriers were the Woodroof (later named Fred L. Hewitt, R. 258), Sonoma, Coralia, and Crescent City (R. 534). Its only other boat with substantial automobile-carrying capacity was the Penobscot (R. 535). These five boats have all been purchased by the Government (Ex. 33, R. 495–496).

vessels and removed them to salt water so that the company was not operating at all in 1943 (R. 437, 463; Ex. 33, R. 495). Although it stated that it intended to resume its former business when this should become possible, carrying out of such a program would probably take a year's time, and in 1943 no plans had been drawn up and no options to charter were held (R. 439–440, 451).

The Great Lakes Transit Company and a competitor whose stock it had acquired prior to 1942 had each operated at a loss continuously from 1934 (R. 439, 441).[12] While the Government, after the close of taking of evidence, returned to the company four of its fourteen requisitioned vessels (R. 13), we are advised that the company has recently sold the four returned vessels for transfer to foreign registry and that it presently has no vessels of any kind.

In contrast to the appellees' lack of any substantial automobile-carrying capacity, the McCarthy Companies are in a position to put their vessels into prompt operation as automobile carriers. Prior to the 1942 navigation season they adapted their vessels for carrying grain, and prior

[12] The company's loss for the 1934–1941 period was well over $2,000,000 (R. 455; Ex. 36, R. 500). In 1942, a period of war-time prosperity and heavy demand for goods and services, the company's operating loss was about $200,000 (R. 462). The Government requisitioned its vessels at different times in 1942 so that the vessels available for operations in that year were cut about 50% (R. 437).

to the 1943 season they made further changes in two vessels to prepare them for carrying iron ore (R. 188, 401). The vessels were used in the bulk trade in 1942 and 1943, chiefly for carrying grain, but they also have had deck space for some automobiles and in 1942 they carried for the Army about 950 automobiles from Detroit to Buffalo (R. 402).[13] The McCarthy Companies own their vessels free and clear of mortgage and they have preserved, in order to permit reconversion of the vessels into automobile carriers, all of the equipment which they had originally put into the vessels when turning them into automobile carriers (R. 403). The vessels are, moreover, obsolete for operation in the bulk trade under peacetime conditions and could not profitably be so employed (R. 405).

Representatives of four automobile manufacturers (Chrysler, Ford, General Motors and Hud-

[13] Such operation was pursuant to temporary authority to operate as common carriers by water on the Great Lakes (R. 13), granted to the McCarthy Companies by the Interstate Commerce Commission under Section 311 (a) of the Interstate Commerce Act (49 U. S. C. 911 (a)). Under this Section, as amended by Section 103 of the Second War Powers Act, 50 U. S. C. App., Supp. IV, sec. 631 (b), subject to the termination provisions of Section 1501 of that Act (as amended by the Act of December 20, 1944, 58 Stat. 827, 50 U. S. C. App., Supp. IV, sec. 645), the temporary certificates held by the McCarthy Companies cannot extend beyond December 31, 1945.

son) and of four driveaway companies [14] testified in support of the applications of the McCarthy Companies for a certificate of public convenience and necessity. It appears from this testimony that during peak periods of production in 1940 and 1941 there were delays in transporting automobiles from Detroit to Buffalo and Cleveland which led to congestion on the docks at Detroit, complaints as to the service, and to some diversion of automobiles from water carriers to motortruck carriers (R. 227, 233, 235, 238, 240, 243–244, 246–247, 254, 256, 268–271, 276, 434).[15] The testimony also shows that if the three McCarthy Companies' vessels had not been used in 1941 for carrying automobiles, the facilities of the companies engaged in shipping automobiles by water from Detroit to Buffalo and Cleveland would have been inadequate for the transportation needs of shippers (R. 221, 228, 234, 237, 246, 259, 271, 277, 434–435).

[14] These driveaway companies are common carriers engaged in transporting automobiles by truck and driveaway convoys and have joint rates with the water lines covering automobiles shipped by water to Buffalo and Cleveland (R. 246, 248, 253, 267–268, 275–276).

[15] Chrysler's representative pointed out that if the automobiles offered for water shipment do not move promptly his company has to find other modes of transportation because it does not have space at its plants to store more than two days' production (R. 227).

SPECIFICATION OF ERRORS TO BE URGED

The district court erred:

1. In holding that the Commission's subsidiary findings do not support its ultimate finding as to public convenience and necessity.

2. In holding that the Commission's determination as to the public convenience and necessity of the transportation service proposed by the McCarthy Companies is invalid in the absence of a positive finding that the appellees will be unable to obtain the additional facilities which they will need in order to meet future transportation demands.

3. In concluding that it is the policy of the statute to forbid operation by a new water carrier if the past service of the existing carriers has been adequate.

4. In substituting its judgment for that of the Commission as to the adequacy of the past service of appellees.

5. In annulling and setting aside the Comission's order of March 7, 1944.

6. In failing to dismiss the complaint.

SUMMARY OF ARGUMENT

I

A. The district court read into Section 309 (c) of Part III of the Interstate Commerce Act, as a limitation on the Interstate Commerce Commis-

sion's power thereunder, a rule that service by a new carrier cannot be found to be required by future public convenience and necessity in the absence of a positive finding by the Commission that the existing carriers will be unable to acquire the additional facilities necessary for meeting future transportation needs. The court thereby substituted its judgment for that of the Commission as to the elements essential to a finding of public convenience and necessity. We submit that the holding is inconsistent with the decisions of this Court interpreting the statute as vesting in the Commission a wide range of administrative discretion in determining public convenience and necessity.

B. The district court supported its construction of Section 309 (c) by concluding that it is the policy of the statute not to permit new competition if the past service of the existing carriers has been adequate. This conclusion is contrary to the construction of the Act by the courts and is not supported by any of its provisions. The adequacy of the past service of the existing carriers is merely one consideration, to be weighed with others, in determining whether future public convenience and necessity will require operation by a new carrier.

II

The Commission found that there was serious doubt whether the appellees, the "grandfather-

date" carriers, will procure the facilities necessary for meeting, promptly and adequately, the transportation demands arising when normal automobile production is resumed, but that the McCarthy Companies unquestionably will (if granted operating authority) put into service vessels which before the war transported over 25% of the automobiles shipped by water from Detroit to other Great Lakes ports. The findings further show that the McCarthy Companies' applications are supported by those most concerned with the adequacy of the transportation service, and that the McCarthy officers are familiar with every phase of the business. We submit that there thus clearly was "a rational basis" for the Commission's conclusion that service by the McCarthy Companies, which will assure rather than leave conjectural the adequacy of the facilities for moving well over a quarter of a million of automobiles annually, will be required by future public convenience and necessity. This being so, the courts may not reject the Commission's administrative determination.

III

The Commission's findings as to the inadequacy of the appellees' prior service are in themselves sufficient, under the circumstances of this case, to support its finding of the public convenience and necessity of new carrier operations, and render

immaterial lack of a positive finding of appellees' inability to acquire the additional facilities necessary for providing adequate future service.

IV

The Commission's action in permitting the McCarthy Companies to broaden, during the course of the hearing, the scope of their application for operating rights was not prejudicial to appellees and was a permissible exercise of the Commission's power to regulate and determine its own procedural requirements.

I

THE COMMISSION'S DETERMINATION AS TO THE PUBLIC CONVENIENCE OF THE McCARTHY COMPANIES' PROPOSED SERVICE IS NOT INVALIDATED BY THE ABSENCE OF A POSITIVE FINDING THAT APPELLEES WILL BE UNABLE TO OBTAIN ADDITIONAL FACILITIES NEEDED TO MEET FUTURE TRANSPORTATION DEMANDS

A. THE STATUTE VESTS IN THE COMMISSION A WIDE RANGE OF ADMINISTRATIVE DISCRETION IN DETERMINING PUBLIC CONVENIENCE AND NECESSITY

The district court held that under Section 309 (c) of Part III of the Interstate Commerce Act (Appendix, *infra*, p. 54), unless the Interstate Commerce Commission specifically found that the appellee carriers will be unable to obtain the additional facilities which they will need if they are to meet the demands of shippers when normal automobile production recommences, the Commission could not rationally conclude that transportation service by the appellant McCarthy Companies

will be required by future public convenience and necessity.

Without conceding that the report of the Commission lacks findings with respect to the ability of appellees to procure facilities adequate to handle the anticipated post-war traffic, the effect of the lower court's decision is to assay the weight to be given such factor. Thus, under the court's decision, doubt as to the ability of the existing carriers to obtain necessary additional transportation facilities in time to meet the foreseeable future demand, and doubt as to the actual carrying out of their expressed intention to do so, are insufficient to support a finding as to the public convenience and necessity of service by a new carrier which has at its command substantial transportation facilities of the kind needed to meet future shipping needs.

We submit that the district court thus read into Section 309 (c) of the Act a limitation upon the Commission's power thereunder which no language of the Section supports and which improperly restricts the latitude which the courts have given the Commission in convenience and necessity cases. The limitation which the district court read into the Section 309 (c) is that service by a new carrier can never be found to be of public convenience and necessity unless actual inability on the part of existing carriers (not grave doubt as to their ability, as found by the Commission) to acquire the facilities requisite to future trans-

portation needs is affirmatively established and embodied in a finding of the Commission.

The provisions of Section 309 of the Interstate Commerce Act (Appendix, *infra*, pp. 53–55) prohibiting anyone from operating as a common carrier by water (unless he is merely continuing his operations on the "grandfather" date) without first obtaining from the Interstate Commerce Commission a certificate that the proposed service is required by public convenience and necessity parallel those of Sections 206 and 207 of Part II of the Act (49 U. S. C. 306, 307) applicable to common-carrier operations by motor vehicle other than those continued from the "grandfather" date. These limitations on new operations have their counterpart in the prohibition in Section 1 (18) of Part I of the Act against extending a line of railroad or constructing a new line unless the Commission has certified to the public convenience and necessity thereof. Neither in the foregoing Sections nor elsewhere in the Act is there any specification of the considerations upon which the Commission is to base its determination of the requirements of public convenience and necessity. Congress has laid down no more definite rule than that the Commission administer these Sections, like analogous provisions of the Act, in such a way as will, in the Commission's judgment promote the objectives implicit in other requirements of the statute or those ex-

pressed in the Congressional declaration of National Transportation Policy (Appendix, *infra*, pp. 52–53). See *Texas & Pacific Ry. Co.* v. *G. C. & S. F. Ry. Co.*, 270 U. S. 266, 277; *New York Central Securities Co.* v. *United States*, 287 U. S. 12, 24–25; *Interstate Commerce Commission* v. *Parker*, No. 507, October Term, 1944, slip op. 4–5.

The decisions of this Court dealing with issuance of certificates of convenience and necessity by the Commission have emphasized the wide range of discretionary authority vested in it. In *Interstate Commerce Commission* v. *Parker*, No. 507, October Term, 1944, the Court said (slip op. 4):

> The purpose of Congress was to leave to the Commission authoritatively to decide whether additional motor service would serve public convenience and necessity. Cf. *Powell* v. *United States*, 300 U. S. 276, 287. This, of course, gives administrative discretion to the Commission, cf. *McLean Trucking Co.* v. *United States*, 321 U. S. 67, 87–88, to draw its conclusion from the infinite variety of circumstances which may occur in specific instances.

And in *Barrett Line, Inc.* v. *United States*, No. 630, October Term, 1944, the Court held (slip op. 17) that it was not at liberty to interfere with the action of the Commission in refusing to issue a certificate for new operation as a contract carrier by water in view of "the range and weight of

the Commission's discretion in relation to such applications".

Under Part I of the Act it has been held that the function of the Commission in passing upon the public convenience and necessity of an extension of a railroad's line is "comparable to that involved in a determination of the propriety or application of a rate, rule or practice". *Texas & Pacific Ry. Co.* v. *G. C. & S. F. Ry. Co.*, 270 U. S. 266, 273. With reference to the meaning of the statute applicable to issuance of certificates authorizing such construction, this Court has said (*Chesapeake & Ohio Ry. Co.* v. *United States*, 283 U. S. 35, 42):

> There is no specification of the considerations by which the Commission is to be governed in determining whether the public convenience and necessity require the proposed construction. Under the Act it was the duty of the Commission to find the facts and, in the exercise of a reasonable judgment, to determine that question.

The district court in the present case read into Section 309 (*e*), as a flat rule of law, that the Commission is without power to find that operation by a new carrier will be required by future public convenience and necessity unless the Commission positively finds that the "grandfather-date" carriers will be unable to procure the facilities which are essential if these carriers are to provide service

commensurate with future transportation needs. The facts here illustrate to what an extent the rule applied by the district court would prevent the Commission from authorizing new carrier service which is or will be required by public convenience and necessity. The appellees, the "grandfather-date" carriers, are without the facilities which they have used in the past in providing transportation service and which they must again have if they are to render adequate service in the future; the ability and willingness of these carriers to obtain such facilities are in many respects highly problematical; and the applicant carriers are experienced in the business and possess facilities which in the past carried more than 25% of the traffic (see *infra*, pp. 37–40). Nevertheless, under the district court's construction of Section 309 (c), the mere fact that it is not affirmatively shown or found that the "grandfather-date" carriers will be unable to acquire the necessary new facilities bars the Commission from finding that the service for which operating authority is sought is or will be required by public convenience and necessity. We submit that this construction deprives the Commission of freedom to exercise administrative judgment in the weighing of all considerations relevant to determination of public convenience and necessity and conflicts with the whole tenor of decisions respecting the Commission's functions and duties in making such determination.

B. IT IS NOT THE POLICY OF THE INTERSTATE COMMERCE ACT TO FORBID NEW CARRIER OPERATIONS IN EVERY CASE IN WHICH THE PAST SERVICE OF THE EXISTING CARRIERS HAS BEEN ADEQUATE

The district court supported its construction of Section 309 (c) by concluding that it is the policy of the Interstate Commerce Act to forbid new competition in any field which has been adequately served by the existing carriers (R. 88). While we later contend (*infra*, pp. 46–48) that the court erroneously substituted its own judgment as to the adequacy of the past service for that of the Commission, we now contend that even if the adequacy of appellees' past service be assumed *arguendo*, the policy against new competition which the district court deduced from the Act is erroneous and contrary to the interpretation given the Act by this Court.

In *Chesapeake & Ohio Ry. Co.* v. *United States*, 283 U. S. 35, this Court, in upholding a certificate authorizing construction of a new railroad line, said (p. 42):

> In the absence of a plain declaration to that effect, it would be unreasonable to hold that Congress did not intend to empower the Commission to authorize construction of new lines to provide for shippers such competing service as it should find to be convenient or necessary in the public interest.

The Court in that case said further (pp. 42–43) that a section of the Act relating to consolida-

tion of railway properties "clearly discloses a policy on the part of Congress to preserve competition among carriers" and that "the Commission has recognized the advantages of competitive service to shippers * * *, that under some circumstances competition operates to stimulate better service and that reasonable competition may be in the public interest."

We submit that the foregoing views have equal application to the provisions of the Act, added by the Motor Carrier Act and the Transportation Act of 1940, forbidding new motor-carrier and water-carrier operations without a certificate from the Commission as to the public convenience and necessity thereof. There is no reason to suppose that Congress intended to give to "grandfather-date" motor and water carriers any greater protection against new competition than it gave to the railroads when Congress, by the Transportation Act, 1920, prohibited extension of any railroad line and construction of any new line without a certificate of public convenience and necessity.

The National Transportation Policy (Appendix, *infra*, pp. 52–53) set forth in the Transportation Act of 1940 indicates no change in policy respecting new competition. It is there declared to be the policy of Congress to foster "sound economic conditions" among the several carriers and to encour-

age reasonable charges for transportation, without "destructive competitive practices." Certainly it cannot be said that in every case in which the service of the existing carriers has been adequate in the past, authorization of new competition will result in unsound economic conditions among the existing carriers or in destructive competitive practices.

It should be noted that a grant of operating authority to the McCarthy Companies will not impair or tend to impair appellees' capital investment in transportation facilities. There will be no impairment of appellees' present capital investment because, if the Commission's order authorizing the McCarthy Companies to operate is sustained, appellees must add to their present facilities if the future shipping needs of the public are to be met (*supra*, pp. 7–8, 13–16, 18). And, in acquiring additional facilities, they will of course do so in the light of the carrying capacity of the vessels operated or to be operated by the McCarthy Companies.

It should also be noted that there is not, in the case of acquisition of automobile carriers, any such permanent commitment of capital as there is when a railroad line is extended or a new line is constructed. To the extent that any appellee obtains automobile carriers under an agreement such as that made between D. & C. and the McCarthy Companies prior to the war, such appellee can, without cost to it, discontinue further use of the

carrier by simply failing to exercise its option to charter the vessel for the next navigation season.[18]

There is not in the present case any grant of new operating authority to a motor carrier which is a subsidiary of a railroad, where the grant might conflict with the declared policy that the Act be administered so as to "recognize and preserve the inherent advantages" of each mode of transportation. Even in that situation this Court has held that the Commission does not exceed the limits of its discretionary authority if it finds—notwithstanding absence of proof "as to the inadequacy of the presently certificated motor carriers" to provide a motor service coordinated with railroad service—that public convenience and necessity require that the railroad's subsidiary rather than the existing motor carriers perform the proposed new kind of motor service. *Interstate Commerce Commission* v. *Parker*, No. 507, October Term, 1944; see also *American Trucking Associations, Inc.* v. *United States*, No. 558, October Term, 1944.

The view of the court below as to the policy of the Act with reference to new competition differs from that expressed by other district courts. In cases involving certificates by the

[18] The Commission did not, as in *American Trucking Associations, Inc.* v. *United States*, No. 558, October Term, 1944, reject any evidence offered to show the economic effect upon the existing carriers of the proposed grant of new operating rights.

Commission that extension or construction of a railroad line is of public convenience and necessity the courts have said that the Interstate Commerce Act, unlike the law of trade-marks, does not give an exclusive right to the first in the field, and that any monopoly of transportation enjoyed by existing carriers is, under the Act, simply a privilege which is subject to exercise by the Commission of its power to find that entrance of an additional carrier into the field is required by public convenience and necessity. *Pennsylvania R. R. Co.* v. *United States*, 40 F. 2d 921, 925 (W. D. Pa.); *Indian Valley R. R.* v. *United States*, 52 F. 2d 485, 487 (N. D. Calif.); cf. *Davidson Transfer & Storage Co.* v. *United States*, 42 F. Supp. 215, 219 (E. D. Pa.), affirmed, 317 U. S. 587. This doctrine has likewise been applied to the motor-carrier field. *Inland Motor Freight* v. *United States*, 36 F. Supp. 885, 888, 889 (D. Idaho).[17]

[17] In *Transcontinental & Western Air, Inc. et al., Additional North-South California Services*, 4 C. A. B. 373, the Civil Aeronautics Board, in granting a certificate of public convenience and necessity for new operating rights, said (p. 375):

> In considering the extent to which competition is necessary to assure the sound development of an air transportation system, therefore, its justification does not depend upon the inability or unwillingness of an existing carrier to render adequate service. The carrier's failure in this regard may evidence a need for competition, but its ability and willingness to furnish a sufficient volume of service does not, of itself,

To accept the view of the district court that it is the policy of the statute to bar new competition in any case in which the service of the existing carrier or carriers has been "adequate" means that, if there was but one carrier operating in the field on the "grandfather" date, this carrier enjoys a legal right to monopolize the field no matter how great the subsequent increase in traffic due to new industrial developments, population changes, and the like. The law as so construed would make inadequacy of service, in the sense of failure to meet the minimum obligations as to serv-

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constitute a bar to the authorization of a competitive service. Otherwise, no competition would ever be authorized for there is no limit to the extent to which an existing carrier could expand to meet increased demand. Adequate service is a relative expression which has been construed to mean only that such facilities must be supplied as might be fairly demanded, * * *. This service is but the minimum standard fixed by the Act, but considerations of national policy require much more.

In *Colonial Airlines, Inc. et al., Atlantic Seaboard Operation*, 4 C. A. B. 552, involving a like certificate, the Board said (p. 555):

> The improvements which flow from a competitive service cannot be obtained by administrative fiat. * * * As we stated in the *California North-South* case there is a strong, although not conclusive, presumption in favor of competition on any route which offers sufficient traffic to support competing services without unreasonable increase of total operating cost.

See also *Pan-American Bus Lines Operation*, 1 M. C. C. 190, 208–209; *Missouri Pac. Transp. Co. Extension-Natchez-New Orleans*, 9 M. C. C. 712, 717.

ice imposed by law, the sole ground for authorizing new competition. The Commission would then be barred from finding that public interest and convenience require new competition as an effective stimulus to improvements and refinements in service. See *Santa Fe Trail Stages, Inc., Common Carrier Application,* 21 M. C. C. 725, 748–749; *Virginia Stage Lines, Inc.* v. *United States,* 48 F. Supp. 79, 81 (W. D. Va.). We contend, in short, that whether entrance of an additional competitor into any particular field of transportation is of public convenience and necessity involves determination of a complicated transportation question and that the function of making this determination "is peculiarly one for the Commission, not the courts". *Alton R. R. Co.* v. *United States,* 315 U. S. 15, 23.

As the foregoing cases (*supra,* pp. 28, 31, 32) fairly indicate, adequacy of existing facilities and service is by no means a conclusive test in applying the statutory standard.[18] Indeed the creation of competition within a given field may be to the public advantage so as to support a finding of public convenience and necessity.

But in the instant case there was not present the bare question of the introduction of new competition in a field already adequately served. The

[18] In *Inland Motor Freight* v. *United States,* 36 F. Supp. 885, 886 (D. Idaho), the protestant carriers unsuccessfully urged that the Commission must find their services inadequate before authorizing operations by a new carrier.

issue before the Commission was one of future public need and convenience. It was confronted with a situation where operations by existing carriers had been suspended and their facilities converted to other uses. It had to determine on the basis of the record before it whether the future shipping needs could be met adequately and promptly when normal operations were resumed. In this setting the question presented, therefore, was whether the policy of the statute foreclosed the Commission's granting the application of the McCarthy Companies. That it did not, we submit, is clear.

The test of the validity of the Commission's order reverts to a consideration of the basis upon which it acted. As shown by its report, the Commission gave consideration to the ability of existing carriers to acquire additional facilities (*supra*, p. 8). But it found that there was much uncertainty as to the length of time that might be required to procure and place in operation on the Great Lakes additional vessels needed to handle the traffic at the termination of the war. So, too, the Commission expressed its doubt whether the replacement by appellees of their vessels would meet the need of postwar traffic. These considerations coupled with its other findings meet the test of "rational basis" (*Rochester Telephone Corp.* v. *United States*, 307 U. S. 125), and the lower court's insistence that the Commission's finding

as to ability to procure the necessary facilities must be positive and unequivocal is erroneous since it is tantamount to a substitution of its judgment for that of the Commission as to the weight to be given relevant factors.

II

THE COMMISSION'S FINDING THAT THE TRANSPORTATION SERVICE PROPOSED BY THE APPELLANT STEAMSHIP COMPANIES WILL BE REQUIRED BY FUTURE PUBLIC CONVENIENCE AND NECESSITY, RESTS UPON A RATIONAL BASIS, AS DISCLOSED BY ITS REPORT, AND IS SUPPORTED BY SUBSTANTIAL EVIDENCE

The situation presented here, in which the "grandfather-date" carriers have lost most of the facilites necessary for providing the transportation service which they were rendering before the war brought the service to a stop, is unusual, but this fact does not alter the Commission's duty or functions under Section 309 (c). Where the situation is exceptional, just as where the facts fall within a familiar pattern, the Commission must determine whether under all the circumstances of the particular case a grant of new operating authority is required by present or future public convenience and necessity. We therefore set forth the facts before the Commission relevant to this issue, for the purpose of demonstrating that the limitation on the Commission's power enforced by the district court defeats a ruling as to public convenience and necessity which, by any conceivable test, is well

within the limits of reasonable administrative judgment.

Concerning the past and prospective operations by appellees, the "grandfather-date" carriers, the evidence showed:

Great Lakes Transit Co. All of its vessels have been requisitioned by the Government and removed to salt water, and at the close of the Commission's hearing the company was not operating at all (R. 437, 463; Ex. 33, R. 495). It would probably take a year to purchase and equip or to build vessels fitted to the needs of its business and no definite plans to this end have been made (R. 439–440, 451). For eight consecutive years before the war the company operated at a loss, during which time its losses amounted to well over $2,000,000, and in 1942 its operating loss was about $200,000 (R. 439, 441). These facts provide little assurance as to either the ability or the willingness of this carrier to furnish after the war, either promptly or at all, the same transportation service rendered by it before the war.

Nicholson. All of this company's four automobile carriers and its only other vessel with substantial automobile-carrying capacity have been purchased by the Government, but the company intends to transport automobiles after the war when there is need for this service (R. 407, 482–483, 485). While the evidence indicates that the

company will probably be able to purchase the requisitioned vessels which it had previously used as automobile carriers, no evidence was offered as to how quickly these vessels could be reconverted into automobile carriers.

D. & C. Of the four automobile carriers operated by this company before the war (R. 490, 540), the three chartered from the McCarthy Companies are no longer available to it and the company's fourth carrier has been requisitioned by the Government (R. 292, 540; Ex. 33, R. 495). The company has no personnel acquainted with automobile shippers and their needs (R. 128, 231–232, 242, 291), and it has shown in the past extreme reluctance to invest its capital in automobile carriers (R. 178–180, 223, 279–280, 288, 292; Ex. 23, R. 316–320). Despite testimony as to the company's general intention to acquire automobile-carrying facilities equal to those previously operated (R. 489–490, 491–492), under all the circumstances the Commission might well have doubted whether the company would proceed with dispatch and vigor in procuring the facilities necessary to serve adequately the future needs of automobile shippers. And the evidence fails to show that the company could definitely obtain the necessary automobile carriers or that, if it did obtain them, how long a time this would take.[19]

[19] On the question of D. & C.'s ability to obtain facilities, the district court referred to the testimony that if the McCarthy Companies had not supplied D. & C. with automo-

The transportation service which the McCarthy Companies are capable of rendering was also fully shown. These companies can promptly put into operation automobile carriers (R. 12, 17, 402, 403, 405) which in 1940 transported at least 27% of all the automobiles shipped by water from Detroit.[20] The president of these companies has had more than 20 years' experience in the business (R. 170–171), including nine years as the exclusive agent for D. & C. in soliciting automobile traffic (Exs. 13, 15, 18, 19, 22; R. 298–300, 302–304, 306–309, 313–315). The McCarthy Companies have been willing to invest their capital in automobile carriers and have every reason, as well as the intention, to do so after the war.

As the Commission's report shows, it is in many respects highly conjectural whether the

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bile carriers it could have obtained them from other sources, and the court made its own assumption that after the war vessels capable of conversion into automobile carriers would be equally available (R. 87).

On the question whether the company would provide adequate facilities the Commission might have taken into consideration the possible advantage to the company of some shortage in automobile carriers, which would lead to full utilization of the space for automobiles on the company's combination passenger and package freight steamers.

[20] Out of total shipments of 262,967 automobiles from Detroit in 1940 (R. 594), vessels of the McCarthy Companies carried 70,064, or 27%. The figure of 70,064 represents the 77,741 automobiles (other than tourist cars) which these vessels carried in 1940, less the 7,667 automobiles carried on them which were shipped from ports other than Detroit (Exs. 24, 25; R. 321).

appellees will make prompt and adequate provision for transporting the automobiles offered for shipment from Detroit to other Great Lakes ports once manufacture of automobiles to meet the demand dammed up by the war gets under way. The McCarthy Companies, on the other hand, can definitely put into almost immediate service vessels which before the war carried more than 25% of this traffic. It is likewise significant that those directly concerned with the adequacy of the post-war service—the leading automobile manufacturers located at Detroit and the trucking companies which move automobiles to inland points after water shipment from Detroit—strongly supported the application of the McCarthy Companies (see Statement, *supra*, pp. 17–18). The question is thus presented whether the statute withholds from the Commission the authority to determine, in the exercise of its administrative judgment, that the public convenience and necessity require that provision of facilities adequate to meet future transportation needs be assured rather than merely conjectural.

The statute certainly does not bar the Commission from basing its decision, in part, on forecasts as to the future. This is implicit in the statutory mandate to determine what "will be" required by "future" public convenience and necessity. Forecasts as to the future equally enter into the Commission's determination whether it concludes that a proposed new service

will not be, or that the service will be, required by the future public convenience and necessity. The Commission in its decision in the present case referred to a decision by Division 5 (*Arco Auto Carriers, Inc., Extension—Kenosha—Racine, Wis.* (not printed)), decided December 18, 1943, granting authority to operate as a motor carrier in the transportation of new automobiles notwithstanding the discontinuance of production of automobiles for civilian use and quoted (R. 18) the following from this decision:

> While the curtailment in the production of automobiles during the national emergency results in a temporary diminution in the demand for the transportation of such commodities, it has not been our policy to deny an application because of the changed conditions resulting from the war, if the evidence otherwise supports a grant thereof. Normal conditions including the demand heretofore experienced are bound to recur and applicant should not then be expected to incur the cost and delay of a further proceeding.

In *New Automobiles in Interstate Commerce*, 259 I. C. C. 475, 555–556, the full Commission in February 1945 rendered a decision in a general investigation, begun in 1939, of the rates and practices applying to transportation of new automobiles by railroads and motor carriers. The Commission rendered decision although most of the parties had asked that the proceeding be dis-

continued or dismissed without a report or held in abeyance until after the emergency, for the reason that virtually all transportation of new automobiles had ceased shortly after our entry into the war and that, when large-scale production is resumed, conditions might be substantially different (*idem*, at p. 477). And in *Newtex S. S. Corp. Common Carrier Application*, 260 I. C. C. 418, an application by a water carrier for a certificate was granted even though existing war conditions did not permit the resumption of its coastwise operations. As here, the protestant carriers had urged that the applicant's claims dealt with the future and were fatally conjectural.

Over a quarter of a million automobiles were shipped by water from Detroit in 1940 (R. 594) when production was considerably less than in 1941 (R. 232) and even further below the anticipated production in the first year after the war (R. 229).[21] The question of availability of facili-

[21] Appellees have never questioned that the post-war demand for facilities for shipping automobiles by water on the Great Lakes will exceed the demand in 1940 and 1941 (see R. 229, 434).

Water shipment of new automobiles on the Great Lakes will offer the same economies and advantages after the war as before. In *New Automobiles in Interstate Commerce*, 259 I. C. C. 475, 554, the Commission said that water carriers "obtain practically all the traffic from Detroit to Cleveland and Buffalo, because they provide mass transportation, as well as good service at the lowest available rates." See also *idem*, p. 487.

ties adequate to meet post-war transportation needs is thus one of serious public concern. In these circumstances the Commission was under a plain duty not to leave the answer to this question in doubt or to mere happenstance if there was any other alternative. The McCarthy Companies' applications for operating authority provided as an alternative a guarantee of facilities which, added to those which appellees may or will provide, should assure the public satisfactory service after the war.

We submit that in this situation it was clearly reasonable for the Commission to conclude that the services of the McCarthy Companies will be required by the future public convenience and necessity. Since there is "a rational basis," disclosed by the report and supported by substantial evidence, for the conclusion reached by the Commission, "the judicial function is exhausted" and the Commission's order must stand although a court, exercising its own independent judgment upon the facts, might reach a conclusion different from that of the Commission. *Rochester Tele-Phone Corp.* v. *United States*, 307 U. S. 125, 146. We submit that the decision of the district court in the present case transgressed this rule in substance, if not in form, and, as we have previously pointed out (*supra*, pp. 28–36), the court's decision finds no support in the policy of the statute.

In the prior proceedings in this case appellees have relied upon a computation purporting to

show the automobile-carrying capacity of Nicholson vessels in excess of their actual carriage of automobiles in 1940 (R. 595).[22] We submit that the basis of the computation is so defective that it can be given very little weight. The computation assumes continuous automobile production throughout the navigation season whereas there customarily is a summer shutdown of production of from four to six weeks to permit retooling and other factory preparations for making new models (R. 200–201, 542, 596–598). It also assumes 252 days of operation by each of the six Nicholson vessels having the largest automobile-carrying capacity although only one of the company's 12 vessels operated for this length of time in 1940 (R. 562, 595). It uses the period of open navigation between Detroit and Cleveland, which is appreciably longer than that between Detroit and Buffalo, to calculate the potential days of operation between Detroit and Buffalo (R. 560–561, 595). It is also questionable whether the computation makes allowance for operating time lost on account of delays for cleaning boilers, repairs, etc. (R. 558–559, 566–567), and when this question was raised counsel for appellees offered to stipulate that the potential operating days

[22] The Commission took notice of this by referring to evidence which had been submitted to show that Nicholson's vessels had not been "operated to capacity in the past" for transportation of automobiles (R. 15).

shown by the computation be reduced 10% on this account (R. 567).

In the district court appellees contended that the Commission's subsidiary finding as to the need for use of the McCarthy Companies' vessels in transporting automobiles when there is again normal production does not support its finding that future public convenience and necessity will require service by the McCarthy Companies as common carriers of automobiles. The contention is that the transportation facilities available to the public will be the same whether the McCarthy Companies' vessels are in the future operated by them or are chartered to and used by D. & C. or one of the other appellees.

Our answer to this contention is twofold. First, future operation of the vessels by the McCarthy Companies is certain (provided necessary authority therefor is granted) while their charter and use by any appellee are uncertain.[23] There is thus presented in another form the question whether the Commission has power to determine that public convenience and necessity require that provision of transportation facilities essential to future shipping needs be assured rather than left conjectural. Second, it is a reasonable, and there-

[23] In view of the controversy between the parties in the present case, it is very doubtful whether either the McCarthy Companies or D. & C. will wish to enter into business relationships and chartering agreements similar to those made before the war.

fore a permissible, conclusion for the Commission to reach that public convenience and necessity will be better served if these needed vessels are operated by their owners who, in addition, largely developed the business, know its needs, and risked their capital in it, rather than by the former charterer of the vessels, of whom none of these things can be said.

III

THE COMMISSION'S FINDINGS AS TO THE INADEQUACY OF THE APPELLEES' PAST SERVICE ARE IN THEMSELVES SUFFICIENT TO SUPPORT ITS FINDING OF THE PUBLIC CONVENIENCE AND NECESSITY OF OPERATIONS BY THE McCARTHY COMPANIES

Concerning the extent to which appellees had failed to provide service fully meeting the needs of shippers, the Commission found (R. 14):

> In 1940 and 1941, there were delays ranging from 2 to 4 days in the loading of the automobiles from the docks at Detroit incident to the congestion of such traffic and the inability of the water carriers to handle it promptly, which caused delays in delivery at final destination and resulted in numerous complaints from automobile dealers and distributors. Because of such delays, it was necessary at times to move by motortruck automobiles which had been previously delivered to the docks at Detroit for water transportation.

The evidence fully supports these findings (see Statement, *supra*, pp. 17–18). It is also clear that

the Commission based its finding as to the public convenience and necessity of the service proposed by the McCarthy Companies in part upon these findings.[24] The Commission said (R. 17):

> At certain times during the period prior to 1942, there were insufficient vessels, including applicants' vessels, fully to meet the needs of shippers of motor vehicles and similar situations may likely arise at such times in the future after the war upon the resumption of normal production of motor vehicles.

The failure of the existing carriers to provide facilities to meet fully the needs of shippers is certainly a cogent reason for concluding that public convenience and necessity require operation by a new carrier.[25] The statute declares it to be the National Transportation Policy to promote "adequate" service and to develop a national transportation system "adequate to meet the needs of the commerce of the United States" (Ap-

[24] The legislative history of Section 14 (1) of Part I of the Act (49 U. S. C. 14 (1)), upon which Section 316 (c) (49 U. S. C. 916 (c)) is modelled, makes it plain that the Commission is not required to make formal and precise findings, H. Rep. No. 591, 59th Cong., 1st sess., p. 4; see also *Meeker & Company* v. *Lehigh Valley R. R.*, 236 U. S. 412, 428; *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, 487; *United States* v. *Louisiana*, 290 U. S. 70, 80; *United States* v. *Baltimore & Ohio R. R. Co.*, 293 U. S. 454, 465.

[25] See cases cited in note 1 of the dissenting opinion in *Interstate Commerce Commission* v. *Parker*, No. 507, October Term, 1944.

pendix, *infra*, pp. 52–53). Where, as here, the prior shortage in transportation facilities was not due to inability to obtain them, it is reasonable to conclude that public convenience and necessity require that the additional facilities which a new carrier will provide shall be available to shippers, irrespective of whether or not the existing carriers will be unable to obtain the additional facilities necessary for meeting future transportation demands.

While the court below may have concluded that appellees' transportation service was adequate notwithstanding the delays which occurred in moving the automobiles offered for shipment during peak periods of production, the Commission concluded otherwise. Since this conclusion is within the range of reasonable administrative judgment, it must be upheld. The Commission's determination of an issue of this kind will not be set aside by the courts "when there is found to be a rational basis for the conclusions approved by the administrative body." *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 146; see also *Chesapeake & Ohio Ry. Co.* v. *United States*, 283 U. S. 35, 42; *McLean Trucking Co.* v. *United States*, 321 U. S. 67, 87–88.

IV

THE INCLUSION OF LAKE SUPERIOR PORTS WITHIN THE OPERATING AUTHORITY GRANTED TO THE McCARTHY COMPANIES WAS NOT ERRONEOUS

The applications filed with the Commission by the McCarthy Companies sought operating rights between Detroit and other Lake Erie ports. On oral argument before Division 4 these companies indicated that they desired authority to serve other ports on the Great Lakes, such as Duluth on Lake Superior (R. 22). At the hearing held after the Commission had reopened the proceedings for further hearings following the decision by Division 4, counsel for the McCarthy Companies stated explicitly that they sought authority to operate between Detroit and Lake Superior ports (R. 410–411, 414). He also formally moved that the companies' applications, if not of this scope, be amended to have that scope, and the Commission's examiner ruled that he would receive testimony offered by the McCarthy Companies with reference to transportation of automobiles between Detroit and Lake Superior ports (R. 418). Appellees, in turn, offered substantial evidence as to such operations (R. 536–546, 548–551, 593–596, 599–601).

Since the appellees had opportunity to, and did, meet the issue raised by the McCarthy Companies' motion to broaden the scope of their applications, appellees were not prejudiced by the

Commission's action in treating the applications as having been broadened to include operations to Lake Superior ports (R. 11–12). We submit that the district court, in upholding the validity of this ruling, correctly stated the controlling considerations as follows (R. 89):

> In view of the wide latitude accorded the Commission in regulating its procedure and freeing it of the technical requirements of pleadings and proofs, and the failure adequately to show prejudice, we are not persuaded that the order of the Commission, if valid, is too broad.

Chicago, St. P., M. & O. Ry Co. v. *United States,* 322 U. S. 1, sustained an order of the Commission against attack upon the ground that it granted to the carrier operating rights greater than those for which application had been made. Both of the grounds on which this Court rested its decision apply to the present case. (1) Since appellees did not put in evidence their petitions for reconsideration (see R. 73–74),[26] they have failed to show that they claimed surprise as to the ruling respecting Lake Superior ports or that they sought to put in new evidence at the rehearing they were requesting. On like facts, this Court said in the *Chicago* case (p. 4): "The Court endeavors to protect the right of parties to fair hear-

[26] Their complaint did not allege that the Commission, by granting operating rights on Lake Superior ports, had denied appellees a fair hearing (R. 1–9).

ings, but it will not presume that their rights have been substantially denied when they do not embrace the opportunity to prove their grievance in the court below." (2) The Court in the *Chicago* case also said that certain provisions of Section 208 (a) of Part II of the Act make it clear that the Commission has power to authorize service greater than the motor carrier has asked. The same provisions are found in Section 309 (d), which applies to certificates of convenience and necessity for operation as a common carrier by water.

CONCLUSION

For the reasons stated, the decree of the district court should be reversed, with directions to dismiss the complaint filed in the district court by the present appellees.

Respectfully submitted.

HAROLD JUDSON,
Acting Solicitor General.
WENDELL BERGE,
Assistant Attorney General.
CHARLES H. WESTON,
Special Assistant to the Attorney General.
WALTER J. CUMMINGS, JR.,
Attorney.

DANIEL W. KNOWLTON,
Chief Counsel,
DANIEL H. KUNKEL,
Attorney,
Interstate Commerce Commission.

SEPTEMBER 1945.

APPENDIX

The Transportation Act of 1940, 54 Stat. 899, inserts before Part I of the Interstate Commerce Act the following declaration of National Transportation Policy:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to

carrying out the above declaration of policy.

Section 309 of Part III of the Interstate Commerce Act, as enacted by the Transportation Act of 1940, 54 Stat. 941, 49 U. S. C. 909, provides in part as follows:

> (a) Except as otherwise provided in this section and section 311, no common carrier by water shall engage in transportation subject to this part unless it holds a certificate of public convenience and necessity issued by the Commission: *Provided, however,* That, subject to section 310, if any such carrier or a predecessor in interest was in bona fide operation as a common carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made and has so operated since that time (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in subsection (b) of this section and prior to the expiration of one hundred and twenty days after this section takes effect. * * *
>
> (b) Application for a certificate shall be made in writing to the Commission, be

verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission shall, by regulations, require.

(c) Subject to section 310,[1] upon application as provided in this section the Commission shall issue a certificate to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if the Commission finds that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied.

(d) Such certificate shall specify the route or routes over which, or the ports to and from which, such carrier is authorized to operate, and, at the time of issuance and from time to time thereafter, there shall be attached to the exercise of the privileges granted by such certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, in-

[1] Section 310 provides that no person shall hold both a certificate of convenience and necessity for operation as a common carrier by water and a permit of convenience and necessity for operation as a contract carrier by water unless the Commission finds, for good cause shown, that both a certificate and a permit may be so held consistently with the public interest and with the national transportation policy declared in the Act.

cluding terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such other terms, and conditions, and limitations as are necessary to carry out, with respect to the operations of the carrier, the requirements of this part or those established by the Commission, pursuant thereto: *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to add to its equipment, facilities, or service within the scope of such certificate, as the development of the business and the demands of the public shall require, or the right of the carrier to extend its services over uncompleted portions of waterway projects now or hereafter authorized by Congress, over the completed portions of which it already operates, as soon as such uncompleted portions are open for navigation.

(e) No certificate issued under this part shall confer any proprietary or exclusive right or rights in the use of public waterways.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 22

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, T. J. McCARTHY STEAMSHIP COMPANY AND AUTOMOTIVE TRADES STEAMSHIP COMPANY,

Appellants,

vs.

DETROIT AND CLEVELAND NAVIGATION COMPANY, GREAT LAKES TRANSIT COMPANY AND NICHOLSON UNIVERSAL STEAMSHIP COMPANY,

Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

BRIEF FOR APPELLEES.

ANGELL, TURNER, DYER & MEEK,
2104 Dime Building,
Detroit 26, Michigan,

MAYER, MEYER, AUSTRIAN & PLATT,
231 South La Salle Street,
Chicago 4, Illinois,

POPE & BALLARD,
120 South La Salle Street,
Chicago 3, Illinois,
Of Counsel.

JAMES TURNER,
WILLIS C. BULLARD,
2104 Dime Building,
Detroit 26, Michigan,
S. S. EISEN,
140 Cedar Street,
New York 6, New York.
ISAAC H. MAYER,
CARL MEYER,
231 South La Salle Street,
Chicago 4, Illinois,
ERNEST S. BALLARD,
120 South La Salle Street,
Chicago 3, Illinois,
Attorneys for Appellees.

October 2, 1945.

INDEX.

	PAGE
Opinion below	1
Jurisdiction	2
Questions presented	2
Statute involved	2
Statement of the case	3
Proceedings before the Commission	3
Summary of evidence	5
Conclusion or finding of the Commission	9
Decision of the Court below	10
Summary of argument	12
Argument	15
I. The Ultimate Finding of the Commission That Future Public Convenience and Necessity Require the Proposed Service of the Appellant Companies Must Under the Law Be Supported by Basic Factual Findings, Which Findings Must in Turn Be Supported by Substantial Evidence	15
II. The Basic Factual Findings of the Commission Do Not in Law Afford a Basis for Its Ultimate Finding That Present and Future Public Convenience and Necessity Require the Operations of Appellant Companies Authorized by the Commission's Order	21
1. The Record Does Not Establish a Definite Need for the Appellant Companies' Vessels as Such but Only for the Carrying Capacity Which They Represented and There Is Absolutely No Showing That Such Carrying Capacity Would Not Have Been Made Available by the Operating Companies Had the Vessels of the Appellant Companies Not Been Used. The Evidence Is Undisputed That Other Vessels Were Available Had the Appellant Companies' Vessels Been Withdrawn from Use	22

2. The Commission's Finding That There Will Be a Future Need for Appellant Companies' Vessels Has No More Support in the Evidence Than Its Totally Unsupported Finding as to the Past Need for Them, and Represents Pure Conjecture Unsupported by Any Established Fact 29

3. Assuming Arguendo That the Commission's Finding Means That Appellant Companies' Presently Owned Vessels Will Be Needed as Automobile Carriers in the Future, Such Finding Does Not Justify an Ultimate Finding That Public Convenience and Necessity Require the Operation of Appellant Companies as Common Carriers of Automobiles 37

A. The finding ignores the fact that the need for future vessels may be met as it was in the past by a charter of these vessels to one or more of the authorized carriers 38

B. The need found is commensurate neither in time nor quantity with the services authorized and can be met by granting appellant companies temporary permits as Congress by section 311 (a) of the Act clearly evidenced its intent any such need should be met 40

C. The effect of the Commission's action is to grant two "grandfather" rights upon the basis of one prior carrier operation. 42

D. The Commission has made manifest that it failed to consider and entirely ignored the effect upon existing carriers of authorizing new carriers in the field 47

III. Answering Certain Arguments of Appellants . . . 52
1. The Commission Made No Finding That the Service Rendered by Appellees in the Past Was Inadequate . . . 55
2. Appellants Err in Their Claim That the Court Below Held That It Is the Policy of the Act to Forbid Any New Competition in a Field Which Has Been Adequately Served 61
Conclusion . . . 65

CITATIONS.

Cases.

Atchison Ry. v. United States, 295 U. S. 193 53
Atlantic Coast Line v. Florida, 295 U. S. 301 19
Bronx Towing Line, Inc., Contract Carrier Application, 250 I. C. C. 614 40
C. & D. Oil Co. Contract Carrier Application, 1 M. C. C. 329 49
Carr Contract Carrier Application, 2 M. C. C. 263 49
Cater's Motor Freight System, Inc., Extension—Wenatchee, 10 M. C. C. 292 60
Chicago Junction Case, 264 U. S. 258 21
Colorado Inter. Gas. Co. v. Federal Pow. Com., 65 S. Ct. 50 18
Construction by San Antonio & Aransas Pass Ry., 111 I. C. C. 483 48
Dixie Ohio Exp. Co. Common Carrier Application, 17 M. C. C. 735 44
Erie & St. Lawrence Corp. Contract Carrier Application, 250 I. C. C. 767 34
Florida v. United States, 282 U. S. 194 17
Howard Hall Co. v. U. S., 315 U. S. 495 16
Interstate Commerce Commission v. Chicago, Burlington and Quincy Railroad Co., 186 U. S. 320 54
Int. Com. Comm. v. Louis. & Nash. R. R., 227 U. S. 88 . 21
Interstate Commerce Commission v. Parker, 65 S. Ct. 1490 ..... 14, 15, 63
K. & G. Ry. Co. v. Commerce Com., 340 Ill. 266 18
Louis. & Nash. R. R. Co. v. Finn, 235 U. S. 601 21
Lykes-Coastwise Line, Inc., Applications, 260 I. C. C. 201 34

National Barge Co. Contract Carrier Applications, 250 I. C. C. 806 ..... 39, 47
N. Y. Central Securities Co. v. U. S., 287 U. S. 12 50
Philadelphia-Detroit Lines, Inc., Extension—Detroit, 26 M. C. C. 729 48
Saginaw Broadcasting Co. v. Federal C. Com'n, 96 F. (2d) 554 16
Schechter Corp. v. United States, 295 U. S. 495 19
Texas & N. O. R. R. v. Northside Ry., 276 U. S. 475 ... 48, 49
Texas & Pac. Ry. v. Gulf, etc., Ry., 270 U. S. 266 ... 41, 49
Thomson v. United States, 321 U. S. 19 46
United States v. B. & O. R. Co., 293 U. S. 454 53
U. S. v. Carolina Carriers Corp., 315 U. S. 475 15
U. S. v. Chicago, M., St. P. & R. Co., 294 U. S. 499 ..... 18, 19
U. S. v. Rosenblum Truck Lines, 315 U. S. 50 45
Vom Baur's Federal Administrative Law, Vol. 2 (1942) 19, 20

OTHER CITATIONS.

Statutes.

Interstate Commerce Act:
National Transportation Policy 71
Interstate Commerce Act:
Part II 44, 46, 47
Part III 44, 47
Sec. 309, 54 Stat. 941, 49 U. S. C. A. 909 ..... 3, 4, 40, 42, 43, 71
Sec. 310 72
Sec. 311, 49 U. S. C. A. 911 ..... 13, 42, 73
Judicial Code, Sections 210 and 238 (28 U. S. C. A. Secs. 47a and 345) 2

Laws of 78th Congress, second session, Chapter 614, Public Law 509 74
Merchants Marine Act of 1936, 57 Stat. 157, 46 U. S. C. 1161 ..... 65, 74
Second War Powers Act of March 27, 1942 74
Transportation Act of 1940, 54 Stat. 899 71

IN THE

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OCTOBER TERM, 1945.

No. 22.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, T. J. McCARTHY STEAMSHIP COMPANY AND AUTOMOTIVE TRADES STEAMSHIP COMPANY,

Appellants,

vs.

DETROIT AND CLEVELAND NAVIGATION COMPANY, GREAT LAKES TRANSIT COMPANY AND NICHOLSON UNIVERSAL STEAMSHIP COMPANY,

Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

BRIEF FOR APPELLEES.

OPINIONS BELOW.

The opinion of the District Court (R. 82-90) is reported in 57 F. Supp. 81. The report of Division IV of the Interstate Commerce Commission (R. 22-25) is reported in 259 I. C. C. 550 and the report of the full Commission on further hearing (R. 10-20) is reported in 260 I. C. C. 175.

JURISDICTION.

Appellants invoke the jurisdiction of this Court under sections 210 and 238 of the Judicial Code (28 U. S. C. A. secs. 47a and 345).

QUESTIONS PRESENTED.

(1) Whether the basic factual findings of the Commission when taken at their full face value are sufficient to justify its ultimate finding that future public convenience and necessity require the operation of appellant companies as common carriers of automobiles between certain designated ports on the Great Lakes.

(2) Whether the basic factual finding of the Commission that there was a past need for appellant companies' vessels can, on the evidence, mean anything more than that there was a need for the carrying capacity represented by those vessels.

(3) Whether the basic factual finding of the Commission that there will be a future need for appellant companies' vessels, if construed to be anything more than a prediction that there may be a future need for the carrying capacity represented by those vessels, has any substantial support in the evidence.

STATUTES INVOLVED.

The pertinent provisions of the Interstate Commerce Commission Act are set forth in the Appendix, *infra*, pages 71-74.

STATEMENT OF THE CASE.

This is an appeal from a decree of a three-judge statutory court, setting aside and annulling a final order of the Interstate Commerce Commission (R. 20-21) issued under Section 309 (c) of part III of the Interstate Commerce Act (49 U. S. C. A., Sec. 909 (c)) granting to the T. J. McCarthy Steamship Company, for itself and as managing agent of Automotive Trades Steamship Company, hereinafter referred to as the "appellant companies," a certificate of convenience and necessity for operating as common carriers by self-propelled vessels, in the transportation of motor vehicles between Detroit, Michigan, and all ports on Lake Erie and between Detroit and ports on Lake Superior.

The appellants are the United States of America, the Interstate Commerce Commission, and the appellant companies. The appellees, plaintiffs in the court below, are the Detroit and Cleveland Navigation Company, a Michigan corporation, hereinafter referred to as the "D. & C. Company," Great Lakes Transit Corporation, a New York corporation, and Nicholson Universal Steamship Company, a Delaware corporation, each of which has the authorization of the Interstate Commerce Commission to operate as a common carrier of motor vehicles by vessels on the Great Lakes (R. 2).

THE FACTS.

Proceedings Before the Commission.

On May 31, 1941, the appellant companies filed separate applications with the Commission (R. 602-611, 624-633), which applications were amended on October 18, 1941 (R. 611-621, 633-646), by which they sought certificates of

public convenience and necessity under the provisions of Sections 309 (a) and 309 (c) of the Interstate Commerce Act authorizing their operation as common carriers by water, in interstate or foreign commerce, in the transportation of motor vehicles between Detroit, Michigan, on the one hand and Cleveland, Ohio; Buffalo, New York; and Erie, Pennsylvania, on the other hand, and between Buffalo and Cleveland.

Hearings were had on the applications before an Examiner, evidence was taken and the Examiner made a report. The issues were argued orally before Division IV of the Commission, which rendered a report denying the applications on November 25, 1942 (R. 21-25). All members of the Division concurred in finding that the appellant companies were not entitled to a certificate under Section 309 (a) of the Act, since neither was in bona fide operation as a common carrier on January 1, 1940. The majority of the Division, one member dissenting, also held that the evidence submitted was not sufficient to support a finding that present or future public convenience and necessity required operation of the appellant companies as common carriers and denied the application under Section 309 (c).

On January 4, 1943, the appellant companies filed a petition for reconsideration and rehearing. On May 28, 1943, the proceedings were reopened and assigned for a rehearing on June 4, 1943, and a rehearing was held on that date (R. 4, 34).

On March 7, 1944, the Commission made a report and finding in which it confirmed the action of Division IV denying the appellant companies a certificate under Section 309 (a) of the Act, but in which it was found (four of the nine members dissenting) that the appellant companies were entitled to a certificate under Section 309 (c) of the Act (R. 10-20).

On the same date, March 7, 1944, the Commission entered an order authorizing the appellant T. J. McCarthy Steamship Company for itself, and as managing agent of appellant Automotive Trades Steamship Company, to operate as a common carrier by self-propelled vessels, in interstate and foreign commerce, in the transportation of motor vehicles between Detroit, Michigan, and all ports on Lake Erie and between Detroit and ports on Lake Superior, the order to become effective from and after June 3, 1944 (R. 20-21).

On April 19, 1944, the appellee Nicholson Universal Steamship Company duly filed a petition for reopening, reconsideration and postponement of the effective date of the order. By order of June 5, 1944, the Commission by a vote of five to four denied said petition. Subsequently the other two appellees in this suit filed like petitions for rehearing, etc., but were advised that the petition of the appellee Nicholson Universal Steamship Company for a rehearing, etc., had been denied (R. 73-74).

Summary of Evidence.

The appellant T. J. McCarthy Steamship Company was organized in 1935 and owns only one vessel, which it acquired in that year (R. 101). It does not appear when the appellant Automotive Trades Steamship Company was organized but it owns only two vessels, which it acquired in 1936 (R. 102, 181). In 1942 all of the three vessels were over forty years old (R. 128).

T. J. McCarthy, president of the T. J. McCarthy Steamship Company, owns 85 percent of the stock of that company and 80 percent of the stock of Automotive Trades Steamship Company (R. 123), and controls the activities of both companies (R. 174).

McCarthy first became connected with the appellee D. & C. Company in 1933 when he entered into an agreement with that company to solicit automobile freight for it on a percentage basis (R. 105, 298). He continued such solicitation under the original or similar agreements until February, 1937, when the agreement between him and the D. & C. Company was canceled and he caused the T. J. McCarthy Steamship Company to enter into a similar agreement with the D. & C. Company (R. 174, 306). The agreement between the two companies continued until February 4, 1942, at which time it was terminated because of the cessation of the manufacture of automobiles for civilian use (R. 313-315).

Under the agreement the McCarthy Company solicited automobile freight for and in the name of the D. & C. Company which acted as a common carrier of the automobiles (R. 129). The D. & C. Company issued its own bills of lading on the automobiles carried (R. 120) and was in full operation of all the vessels on which the automobiles were carried (R. 115-119).

In the fall of 1933 the D. & C. Company put on two additional vessels to carry automobiles between Detroit and Buffalo and Detroit and Cleveland (R. 173-174, 300) and another in 1934 (R. 178). None of these vessels was owned by either of the appellant companies.

In 1937 at the time the D. & C. Company entered into the solicitation agreement with the McCarthy Company it also entered into a charter agreement with the two appellant companies whereby it chartered from them two vessels for the 1937 season with an option to renew the charters from year to year through the 1942 season (R. 122, 161-167, 294-295). It renewed the charter on these vessels for each year but the charter agreement was terminated on February 4, 1942, after the manufacture of new automobiles had ceased (R. 313-315).

In 1940 the D. & C. Company chartered the other vessel owned by the appellant Automotive Trades Steamship Company and operated it in the carriage of automobiles during the 1940 and 1941 seasons. It was not needed in that operation prior to 1940 (R. 181, 211).

As the business of the D. & C. Company as a carrier of automobiles increased, the company from time to time put into operation the vessels necessary to adequately care for the same (R. 181).

The appellant companies offered the evidence of three witnesses representing three manufacturers of automobiles who shipped automobiles from Detroit by water carrier to the effect that if in the year 1941 the three vessels of the appellant companies chartered by the D. & C. Company and operated by it for the carriage of automobiles from Detroit had been withdrawn from that service, the other vessels then being operated by the automobile carriers for the transportation of automobiles from Detroit would not have been sufficient to adequately take care of the automobiles shipped by water (R. 221, 228, 237). The representatives of three drive-away companies, that is, companies that picked up the automobiles at port of debarkation and continued the transportation overland, also testified to like effect (R. 246, 256, 271). This testimony will be discussed more in detail in connection with an examination of the Commission's finding. None of the witnesses called on behalf of the appellant companies testified or attempted to testify as to whether the carrying companies could have obtained other vessels in lieu of the vessels of the appellant companies had they been withdrawn from service. Evidence introduced by the appellees showed that other vessels would have been readily obtainable had the appellant companies' vessels been withdrawn from service (R. 491).

The above mentioned witnesses called by the appellant companies also testified that in their opinion after the war and when the manufacture of new automobiles is resumed, the appellant companies' vessels would be needed to aid in the transportation of automobiles on the Great Lakes, this prediction being based upon their testimony that they were needed in the past. None of said witnesses knew when the manufacture of automobiles would be resumed or in what volume (R. 222, 229, 239).

Appellee D. & C. Company has operated as a common carrier on the Great Lakes since 1868 and as a carrier of automobiles since 1933 (R. 489). Appellee Great Lakes Transit Corporation has operated as a common carrier on the Great Lakes since 1916 (R. 438). It does not definitely appear from the record when the appellee Nicholson Universal Steamship Company first began to operate as a common carrier on the Great Lakes, but over the years it had built up an outstanding reputation as a carrier of automobiles (R. 485, 536). In 1935 and 1936 some of its automobile carriers were idle throughout the entire season and in 1937 they were converted into bulk carriers as the automobile tonnage in that year did not warrant their retention as automobile carriers. although it was an "abnormal year" and "second in the production of automobiles" (R. 549-550).

Appellee Nicholson Universal Steamship Company also produced evidence showing that it had a very large unused capacity for automobile carriage on the Great Lakes in 1940 (R. 537-539, 595).

Early in 1942 the production of automobiles for civilian use was stopped (R. 401). Under the great pressure for transportation facilities in other fields, the vessels of the various companies, being no longer usable as automobile carriers except for a relatively small number of automo-

biles and trucks for Government purposes which were carried on the decks of the bulk freighters, were in large measure diverted to other fields essential to the war effort (R. 483, 477-478).

CONCLUSION OR FINDING OF THE COMMISSION.

The majority of the Commission summarized its conclusion as to what was shown by the evidence in the case in the following language (R. 17):

> "The record establishes that there was a definite need for applicants' *vessels* in the transportation of motor vehicles between Detroit and Lake Erie ports prior to the cessation of the manufacture of motor vehicles for civilian use. It also shows with reasonable certainty that there will be a like need for *them* in that service at the termination of the war or when normal production and shipment by water of motor vehicles for civilian use are resumed. Witnesses representing manufacturers producing the bulk of the automobiles at Detroit testified as to this need in the future, not only as to transportation between Detroit and Lake Erie ports but also as to Lake Superior ports; that in the absence of applicants' *vessels* it would not have been possible for the water carriers to have handled the automobiles offered for transportation in 1940 and 1941, and that with the resumption of automobile manufacture the use of applicants' *facilities* will be necessary in the handling of such traffic. Refusal of applicants' right to initiate such operations with their own vessels might seriously impair their investment in those vessels and while that fact is not controlling, the refusal would according to this record deprive shippers of necessary transportation facilities which would not be in the public interest.'"*

Although in its report the Commission made reference to some testimony, hereinbelow discussed, relative to some

* Italics ours throughout unless otherwise indicated.

slight delay in making shipments from Detroit in 1940 and 1941 (R. 14), it made no finding that the service in the past was inadequate and there was no evidence in the record to justify such finding.

Four members of the Commission, including the Chairman, dissented, stating that there was no evidentiary support in the record for a finding that future convenience and necessity required the operation proposed by the appellant companies (R. 19-20).

DECISION OF THE COURT BELOW.

The court below at the beginning of its opinion stated that factual determinations made by the Commission, if supported by evidence, are final (R. 82). It recognized the well established rule that the ultimate finding as to public convenience and necessity must rest upon the evidentiary findings of the Commission, and that if such evidentiary findings do not support the ultimate finding the latter cannot stand (R. 83-84). It took the view that the finding of the Commission that appellant companies' vessels were needed in the past to supply the needs of automobile manufacturers meant no more than that there was a need for the carrying capacity represented by said vessels. It stated that there was no finding to the effect that if the D. & C. Company had not chartered the vessels of appellant companies, there was no other carrying capacity it could have acquired, and that the uncontroverted evidence in the record established the contrary. It further stated that, accepting the Commission's finding of future needs based upon the past need for carrying capacity, it would seem to be clear that the shipping tonnage available before the emergency will again be available when the emergency passes (R. 86-87). It pointed out that the effect of the Commission's finding and order is

to introduce new and competing carriers into a field adequately served, without the definite need of the service being shown and that this was contrary to the clearly defined purpose of the Transportation Act (R. 88). It concluded its opinion upon the question by saying (R. 89):

> "We find ourselves, therefore, in accord with the four dissenting members of the Commission, including its chairman, when they say, 'the fact that the applicants' vessels were used as they were to carry automobiles prior to the present emergency and may be needed for that service when the production of automobiles is resumed, does not warrant the conclusion that there will be need for the operation of such vessels by applicants as a new carrier in the field. That will not increase the amount of service formerly provided,' and also when they say, 'The decision of the majority is based upon too many assumptions and suppositions to be sound as a matter of law.'"

SUMMARY OF ARGUMENT.

I. The ultimate finding of the Commission that future public convenience and necessity require the proposed service of the appellant companies must under the law be supported by basic factual findings, which findings must in turn be supported by substantial evidence.

II. The basic factual findings of the Commission do not in law afford a basis for its ultimate finding that present and future public convenience and necessity require the operations of appellant companies authorized by the Commission's order. This is true because:

1. The record does not establish a definite past need for the appellant companies' vessels as such but only for the carrying capacity which they represented and there is absolutely no showing that such carrying capacity would not have been made available by the operating companies had the vessels of the appellant companies not been used. The evidence is undisputed that other vessels were available had the appellant companies' vessels been withdrawn from use.

2. The Commission's finding that there will be a future need for appellant companies' vessels has no more support in the evidence than its totally unsupported finding as to the past need for them, and represents pure conjecture unsupported by any established fact.

3. Assuming arguendo that the Commission's finding means that appellant companies' presently owned vessels will be needed as automobile carriers in

the future, such finding does not justify an ultimate finding that public convenience and necessity require the operation of appellant companies as common carriers of automobiles.

This is true because:

A. The finding ignores the fact that a future need for the vessels may be met, as it was in the past, by a chartering of those vessels to one or more of the authorized carriers.

B. The need found is commensurate neither in time nor quantity with the services authorized, and can be met by granting appellant companies temporary permits as Congress by Section 311(a) of the Act clearly evidenced its intent any such need should be met.

C. The effect of the Commission's action is to grant two "grandfather" rights upon the basis of one prior carrier operation.

D. The Commission has made manifest that it failed to consider and entirely ignored the effect upon existing carriers of authorizing new carriers in the field.

III. Answering certain arguments of appellants, it appears that substantial portions of the briefs of both the appellant companies and of the Commission consist of a search of the record and the advancement of reasons which it is conceived might, in the minds of the Commission, have substantiated its ultimate finding of convenience and necessity. This is a futile endeavor. The failure of the Commission to make the necessary findings cannot be so remedied. The Court cannot search the record and make findings for the Commission in order that its action may be sustained.

The Commission made no finding that the services rendered by appellees in the past was inadequate, and the Court will not supply such finding by implication.

Appellants are in error when they claim that the Court below held that it is the policy of the Act to forbid any new competition in a field which has been adequately served. The Court below did not hold that a need for new and competing carriers in a field could not be shown in any case where the past services had been adequate; it held that such need had not, on the findings, been shown in this case.

The question of whether any findings, other than findings of inadequacy of past service, would justify the admission of new and competing carriers into the field, does not have to be determined in this case, since no other such findings were made. The case of *Interstate Commerce Commission* v. *Parker*, 65 S. Ct. 1490, indicates that, except possibly in unusual cases, a finding of inadequacy of past services would be necessary to justify admitting a new and competing carrier into the field.

ARGUMENT.

I.

THE ULTIMATE FINDING OF THE COMMISSION THAT FUTURE PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE PROPOSED SERVICE OF THE APPELLANT COMPANIES MUST UNDER THE LAW BE SUPPORTED BY BASIC FACTUAL FINDINGS, WHICH FINDINGS MUST IN TURN BE SUPPORTED BY SUBSTANTIAL EVIDENCE.

The rule that an ultimate finding of public convenience and necessity must have support in basic factual findings is a rule of necessity and is of long standing. This Court has repeatedly stated that such is the law. In *Interstate Commerce Commission* v. *Parker*, 65 S. Ct. 1490 (decided June 18, 1945), this Court said, page 1492:

> "* * * A finding of public convenience and necessity was made, 42 M. C. C. at 726, but that ultimate finding must have been based on the proper statutory criteria *and must have had the necessary factual findings to support it.*"

The case of *U. S.* v. *Carolina Carriers Corp.*, 315 U. S. 475, involved an order of the Interstate Commerce Commission granting to a motor carrier a certificate of convenience and necessity under the grandfather clause of Section II of the Interstate Commerce Act. The Commission's order determined that only certain commodities could be carried and that some could be transported only between designated points in the territory involved. It was held that the portion of the Commission's order so limiting the right to carry certain commodities should be set aside because the basic or essential findings required to support that portion of the order were lacking. This Court examined the Interstate Commerce Act and found

that the rights of the applicant were to be determined by certain standards and said (pp. 488-489):

> "The precise grounds for the Commission's determination that only certain commodities could be carried and that only a few could be transported between designated points are not clear. It is impossible to say that the standards which we have set forth were applied to the facts in this record. Hence, as in *Florida* v. *United States*, 282 U. S. 194, 215, the defect is not merely one of the absence of a 'suitably complete statement' of the reasons for the decision; it is the 'lack of the basic or essential findings required to support the Commission's order.' And see *United States* v. *Baltimore & Ohio R. Co.*, 293 U. S. 454, 464; *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, 510-511. Congress has made a grant of rights to carriers such as appellee. Congress has prescribed statutory standards pursuant to which those rights are to be determined. Neither the Court nor the Commission is warranted in departing from those standards because of any doubts which may exist as to the wisdom of following the course which Congress has chosen. Congress has also provided for judicial review as an additional assurance that its policies be executed. That review certainly entails an inquiry as to whether the Commission has employed those statutory standards. If that inquiry is halted at the threshold by reason of the fact that it is impossible to say whether or not those standards have been applied, then that review has indeed become a perfunctory process."

The same rule was applied in *Howard Hall Co.* v. *U. S.*, 315 U. S. 495.

In *Saginaw Broadcasting Co.* v. *Federal C. Com'n*, 96 F. (2d) 554 (U. S. App. D. C.), the Court set aside an order of the Federal Communications Commission granting a permit for the construction of a radio broadcasting station upon the ground that the Commission's finding, which

was a statutory prerequisite to the issuance of a permit, that public convenience, interest or necessity would be served by the station, was not supported by the necessary basic findings. The court said (p. 559):

> "When a decision is accompanied by findings of fact, the reviewing court can decide whether the decision reached by the court or commission follows as a matter of law from the facts stated as its basis, and also whether the facts so stated have any substantial support in the evidence. In the absence of findings of fact the reviewing tribunal can determine neither of these things. The requirement of findings is thus far from a technicality. On the contrary, it is to insure against Star Chamber methods, to make certain that justice shall be administered according to facts and law. This is fully as important in respect of commissions as it is in respect of courts."

The court pointed out that in *Florida* v. *United States*, 282 U. S. 194, this Court had set aside an order of the Interstate Commerce Commission regulating certain intrastate rates on the ground that, although the Commission had made an ultimate finding in the language of the statute, it was not supported by basic findings, quoting from the opinion of this Court in that case as follows (pp. 560-561):

> "The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this Court has recently adverted * * * *but of the lack of the basic or essential findings required to support the Commission's order.* In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported."

The Court also cited and quoted from the case of *U. S.* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, and from the case of *K. & G. Ry. Co.* v. *Commerce Com.*, 340 Ill. 266, where the Supreme Court of Illinois had set aside an order of the Illinois Commerce Commission granting a certificate of convenience and necessity to a motor carrier upon the ground that the findings of the Commission were not specific enough to enable the court to review intelligently the decision of the Commission and ascertain whether the facts upon which the Commission had based its order afforded a reasonable basis therefor.

The Court then said (p. 561):

> "These decisions show that a reviewing court cannot properly exercise its function upon findings of ultimate fact alone, *but must require also findings of the basic facts which represent the determination of the administrative body as to the meaning of the evidence, and from which the ultimate facts flow.* Such findings are, we think, just as necessary in cases involving the application of the statutory criterion of public convenience, interest, or necessity set up by the Communications Act, as in those cases which under the Interstate Commerce Act require the application of the standard of unjust discrimination, or in those cases which under state public utility statutes require the application of the criterion of public convenience and necessity."

Petition for certiorari in that case was denied by this Court, 305 U. S. 613.

In *Colorado Inter. Gas Co.* v. *Federal Pow. Com'n*, 65 S. Ct. 850, which was a rate case, this Court said (p. 854):

> "We have repeatedly emphasized the need for clarity and completeness in the basic or essential findings on which administrative orders rest. *State of Florida* v. *United States*, 282 U. S. 194, 215, 51 S. Ct. 119, 125, 75 L. Ed. 291; *United States* v. *Baltimore & Ohio R.*

Co., 293 U. S. 454, 464, 55 S. Ct. 268, 273, 79 L. Ed. 587; *United States* v. *Chicago, M. St. P. & P. R. Co.*, 294 U. S. 499, 504, 505, 510, 511, 55 S. Ct. 462, 464, 465, 467, 79 L. Ed. 1023; *United States* v. *Carolina Freight Carriers Corp.*, 315 U. S. 475, 488, 489, 62 S. Ct. 722, 729, 730, 86 L. Ed. 971. Their absence can only clog the administrative function and add to the delays in rate-making. We cannot dispense with them for Congress has provided the standards for judicial review under this Act. § 19 (b). The courts cannot perform the function which Congress assigned to them in absence of adequate findings. *Nor are they authorized under § 19 (b) to make findings and substitute them for those of the Commission.*"

In *Atlantic Coast Line* v. *Florida*, 295 U. S. 301, this Court said (p. 306):

> "It was not enough to find that the intrastate rates were unreasonably low. It was not enough to state the conclusion that interstate commerce was unjustly affected. *It was necessary to find the facts supporting the conclusion*, as, for instance, that the revenues of interstate commerce would probably be increased if the rates for intrastate hauls were established at a higher level."

To the same effect is *U. S.* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, at page 504, and *Schechter Corp.* v. *United States*, 295 U. S. 495, at page 540.

In Vom Baur's *Federal Administrative Law*, Volume 2 (1942), it is said (p. 549):

> "An ultimate finding, although grammatically fitting constitutional and statutory requirements for application of a statutory mandate, need not be taken at its face value. On the contrary, an ultimate finding is a mere conclusion, insufficient as a finding, unless supported by basic findings, that is, detailed statements of the pivotal, constitutive facts which furnish a concrete factual basis for the conclusory ultimate finding."

At page 552-553:

"An important purpose of all findings is to enable the courts to discharge one proper function, that is to make sure that the administrative agency, in the discharge of its highly specialized and technical duties, has followed the statute. * * * What findings are basic is a practical matter; those are such which are needed to ascertain on what legal theory the agency has proceeded. And where these are absent an administrative order founded upon an ultimate finding alone is invalid and must be set aside. The legal theory can only be ascertained if the full factual situation is honestly disclosed."

Again at page 553:

"* * * Words must be honestly and accurately used. If a standard term such as 'unreasonable', 'unjustly discriminatory', 'public interest', 'public convenience and necessity', 'protection of investors', etc., could be given effect as a mere combination of letters without inquiring as to its true meaning and the applicability of that meaning to a particular factual situation, there would be no bounds to the assumption of power by administrative agencies. Constitutional limitations would in their turn become empty phrases. It would be impossible to prevent agencies from exercising power not conferred in order to effectuate personal whims, ulterior motives, or other extralegal considerations, under the guise of exercising lawful powers. Under our constitutional system this may not be done."

It is also elementary law that the findings of an administrative agency must be supported by substantial evidence or the order based on such findings cannot stand.

Thus Vom Baur says, Volume 2 (pp. 568-569):

"An administrative order which is based upon a finding on an administrative question which is not supported by substantial evidence must be set aside as arbitrary and a denial of due process. * * *

"The requirement of substantial evidence is one of the elements of a valid delegation of legislative power to an agency under the Constitution."

It is also said by the same author, at page 564:

> "* * * as a requirement of law, there must be a rational basis in evidence for the conclusions approved by the administrative agency."

In *Int. Com. Comm.* v. *Louis. & Nash. R. R.*, 227 U. S. 88, the Court said (p. 92):

> "But the legal effect of evidence is a question of law. A finding without evidence is beyond the power of the Commission. An order based thereon is contrary to law and must, in the language of the statute, 'be set aside by a court of competent jurisdiction.'"

To the same effect are the *Chicago Junction Case*, 264 U. S. 258, at page 265, and *Louis. & Nash. R. R. Co.* v. *Finn*, 235 U. S. 601, at page 606.

II.

THE BASIC FACTUAL FINDINGS OF THE COMMISSION DO NOT IN LAW AFFORD A BASIS FOR ITS ULTIMATE FINDING THAT PRESENT AND FUTURE PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE OPERATIONS OF APPELLANT COMPANIES AUTHORIZED BY THE COMMISSION'S ORDER.

We will not here repeat the basic factual findings of the Commission upon which it bases its order and which are set forth at page 9 of this brief.

These basic findings involve the determination of three things, namely: (1) that there was a definite need for the appellant companies' vessels in the past; (2) that there will be such need in the future when the production of automobiles for civilian use is resumed; (3) that such future need can be met only by authorizing the appellant companies to operate as common carriers.

We will discuss these three determinations in order:

1.

The Record Does Not Establish a Definite Past Need for the Appellant Companies' Vessels as Such But Only for the Carrying Capacity Which They Represented and There Is Absolutely No Showing That Such Carrying Capacity Would Not Have Been Made Available by the Operating Companies Had the Vessels of the Appellant Companies Not Been Used. The Evidence Is Undisputed That Other Vessels Were Available Had the Appellant Companies' Vessels Been Withdrawn From Use.

The statement or finding that there was a "definite need" for the three vessels of the appellant companies in the past is highly ambiguous in the light of the question which the Commission attempted to determine, namely, do public convenience and necessity require the operation of the appellant companies as common carriers of automobiles?

The finding might mean either one of two things, namely: (1) that there was a definite need for the carrying capacity represented by the three vessels, or (2) that there was a definite need for such carrying capacity which could have been met only by using the three vessels of the appellant companies.

The evidence in the record cannot possibly justify any but the first meaning, namely, that there was a need for the carrying capacity represented by the three vessels.

The Commission's statement is based on the testimony of witnesses representing manufacturers of automobiles at Detroit. Thus the Commission says: "Witnesses representing manufacturers producing the bulk of the automobiles at Detroit testified * * * that in the absence of appellants' vessels it would not have been possible for the water carriers to have handled the automobiles offered for transportation in 1940 and 1941" (R. 14). It appears from

the record that there were three witnesses from three automobile manufacturers who testified. The question asked them was whether it would have been possible to move on the remaining vessels of the companies operating on Lake Erie the 85,493 cars that were carried on the vessels of the appellant companies under charter to the D. & C. Company in 1941, if those vessels had been withdrawn from service. They stated it would not have been possible (R. 221, 228, 237). No mention was made of the year 1940 in the question to those witnesses. The Commission is in error in stating that they so testified as to 1940.

It is obvious that all this testimony means or can mean is that the carrying capacity represented by the three vessels was needed to move the automobiles in 1941 and this need was apparently predicated on the fact that there was a need at the peak of the season in October and November (R. 221, 228, 238). In other words, if a portion of the facilities supplied by the carrying companies to carry automobiles had been withdrawn, the facilities which remained would not have been adequate. There was no showing or attempt to show that if the three vessels of the appellant companies had not been available and chartered by the D. & C. Company at the beginning of the year 1941 for service in that year, that company would not or could not have elsewhere secured the needed vessels.

Witnesses connected with three trucking companies who hauled cars by truck from Buffalo testified that if the three vessels of the appellant companies had not been operated in 1940 and 1941 the water carriers could not have adequately transported the automobiles offered for transportation (R. 246, 256, 271), although no representative of any automobile manufacturer so testified as to the year 1940. One of the witnesses also testified there were so many cars put off the boats at Buffalo that if was neeessary to ship some away by rail which the truckers could not handle, and that

all carriers had difficulty at the peak loads of the season (R. 271-272). This testimony means no more than the testimony of the witnesses for the automobile manufacturers.

The vessels of the appellant companies carried 77,741 automobiles for the D. & C. Company in 1940 (R. 321).

During the 1940 automobile season, appellee Nicholson Universal Steamship Company operated the following number of steamers with the following carrying capacities per trip: Two with a carrying capacity of 450 each; one with a carrying capacity of 370; one with a carrying capacity of 360; one with a carrying capacity of 260; two with a carrying capacity of 70 each; one with a carrying capacity of 60; two with a carrying capacity of 50 each; and one with a carrying capacity of 35 (R. 534-535, 595).

A season comprises a normal period of 252 days of open navigation. During the 1940 season, due to a lack of available automobile tonnage, one of said boats with a carrying capacity of 260 automobiles per trip operated only 105 days; one with a carrying capacity of 360 per trip operated only 141 days; one with a carrying capacity of 450 per trip operated only 162 days; one with a carrying capacity of 360 per trip operated only 197 days; and one with a carrying capacity of 450 per trip operated only 194 days (R. 537-539, 595).

By the number of days operated is meant the number of days the vessels were actually in service with steam up even though temporarily tied up at Detroit awaiting a load of automobiles. The five vessels with a combined capacity of 1,890 cars per trip were tied up at the docks idle for a period of 461 boat days during the 1940 season. Throughout the open navigation season there was on the average two of these five large capacity vessels tied up each operating day of the season. This inactivity was the result of inadequate automobile tonnage available for transportation

on the lakes. If the 461 days had been utilized and the vessels so utilized had been loaded to their full capacity, the Nicholson Universal Steamship Company alone could have carried 87,342 additional automobiles to Buffalo if the vessels had been placed in that service, or 174,685 additional automobiles to Cleveland if placed in the Cleveland service (R. 537-538, 595).

This computation is criticized in the Commission's brief (pp. 43-44). But the testimony was that the 252-day operating season on which the computation is based "is a normal period of lake navigation in the automobile trade" (R. 539) and it is during such period that the automobile carriers should be ready to afford transportation facilities, even though during some portion of that period production of automobiles may be slowed down or suspended on the part of one or more manufacturers. In 1940 boats could be and were operated for a period of 252 days (R. 560, 562). In 1940 beginning with the month of April and extending into the month of December shipments of automobiles were made from Detroit to Buffalo and Cleveland, and shipments were made from Detroit to ports on Lake Michigan and Lake Superior beginning with April and extending into November (R. 594). If, pursuant to stipulation of counsel for appellee companies, 10 percent is deducted from the number of operating days and a corresponding deduction made in the automobile carrying capacity, the unused capacity of the Nicholson Company for 1940 is very large.

In addition to the said five vessels that company had a number of other vessels whose carrying capacity was not fully utilized (R. 538). This was true although the number of automobiles transported by the lake carriers in 1940 was 262,967, or almost double the number transported in 1938, and 65,000 in excess of the number transported in 1939 (R. 594).

In October 1940 the Nicholson Universal Steamship Company carried 29,000 automobiles. In April of that year it carried 15,000 less than in October, in May 6,000 less than in October, in June 10,000 less than in October, in July 23,000 less than in October, in August 28,000 less than in October, in September 6,000 less than in October, and in November 3,000 less than in October (R. 594).

These facts may explain why the witnesses for the three automobile manufacturing companies did not testify that if the three ships of the appellant companies had been withdrawn from service in 1940 the remaining automobile carrying ships could not have adequately handled the traffic.

There was certainly no shortage of automobile carrying vessels in 1939. One of the ships of the appellant companies, although acquired in 1936, was not converted into an automobile carrier until 1940. It was operated from 1936 to 1939 as a bulk carrier for such cargoes as it could get (R. 213). Mr. McCarthy testified that bulk shipping was very slow and slack on the lakes in 1939 and he was not able to get a cargo for that vessel until September of that year (R. 183); that it was converted into an automobile carrier and chartered to the D. & C. Company in the spring of 1940 and "we worked up enough automobile business to keep it busy" (R. 211).

As a matter of fact it is clear from the record that the D. & C. Company put on boats to carry automobiles whenever they were needed. As previously shown, the company put on two boats to carry automobiles between Detroit and Buffalo and Detroit and Cleveland in 1933 (R. 173-174, 300) and another in 1934 (R. 178). In 1937 they put on two of the appellant companies' boats and the third in 1940, which on McCarthy's own testimony was as soon as needed (R. 122, 161-167, 294-295, 181, 211).

That the boats of the appellant companies were not the

only boats that the D. & C. Company might have put in service is also shown by McCarthy's testimony (R. 181):

> "Q. Mr. McCarthy, at the time that the Automotive Trades Steamship Company purchased the Tremaine and Ingalls to handle this additional traffic, did you at that time have any discussions with officials of the Detroit & Cleveland Navigation Company?
>
> "A. I did.
>
> "Q. And what were those discussions and with whom did you have them? Or, rather, with whom did you have this discussion and about what were they?
>
> "A. With Mr. Wright (Freight Traffic Manager of the Detroit & Cleveland Navigation Co.), who wished to assure me, when I told him that the boats had been inspected and passed inspection, he assured me that there was no responsibility on the part of the D. & C. for our purchasing the boat and there was no liability for the D. & C. to use them and I at that time advised him that I was taking it on my own responsibility and hoped to develop sufficient business to use the boats and asked if in the event sufficient business was developed in accordance with an agreement we earlier had would they not put on the boats that I had purchased rather than chartering more outside boats from some other company and he said, Oh, yes; they would."

He also testified that "as the business gradually developed", the appellant companies' boats "were put on to handle the additional business" (R. 181). There is absolutely no evidence in the record in the least tending to show that if all three of the appellant companies' vessels had been removed from service at the beginning of the 1941 season, the D. & C. Company either could not or would not have made available vessels of sufficient carrying capacity to take their place. The evidence is all to the contrary. McCarthy was anxious that the D. & C. Company put on his companies' boats instead of getting others. This showed that he considered other boats available. On his own testimony they put on automobile carriers as fast as they were

needed. McMillan, the general manager of the D. & C. Company, testified that if they had not obtained the ships of the appellant companies "there were many other places they could have been readily obtained" (R. 491). There is not the least contradiction of this testimony anywhere in the record.

As previously stated, the mere fact, as testified to by witnesses from the automobile manufacturing companies, that if the appellant companies' boats had not been used for carrying automobiles in 1941, the other ships in that service would not have been able to properly handle the traffic, means nothing so far as the ability and willingness of the automobile carriers to supply adequate facilities for the carriage of all automobiles offered is concerned, except that it shows good management in not having an oversupply of boats that would not have been economically employed except at the peak of the season of a peak year in the automobile traffic.

The court below found, and stated that the brief of the Government and the Commission appeared to concede, that the finding that the vessels of appellant companies were needed to supply the needs of the automobile manufacturers in the past meant no more than that their carrying capacity was required. The court also stated that not only did the Commission not find that had the D. & C. Company not chartered the vessels of the appellant companies there was no other carrying capacity which it could have acquired, but that the record established the contrary (R. 86-87).

2.

The Commission's Finding That There Will Be a Future Need for Appellant Companies' Vessels Has No More Support in the Evidence Than Its Totally Unsupported Finding as to the Past Need for Them, and Represents Pure Conjecture Unsupported by Any Established Fact.

Summarizing the record before it the Commission said (R. 17):

> "The record establishes that there was a definite need for applicants' vessels in the transportation of motor vehicles between Detroit and Lake Erie ports prior to the cessation of the manufacture of motor vehicles for civilian use. It also shows with reasonable certainty that there will be a like need for them in that service at the termination of the war or when normal production and shipment by water of motor vehicles for civilian use are resumed. Witnesses representing manufacturers producing the bulk of the automobiles at Detroit testified as to this need in the future, * * * that in the absence of applicants' vessels it would not have been possible for the water carriers to have handled the automobiles offered for transportation in 1940 and 1941, and that with the resumption of automobile manufacture the use of applicants' facilities will be necessary in the handling of such traffic. Refusal of applicants' right to initiate such operations with their own vessels * * * would according to this record deprive shippers of necessary transportation facilities which would not be in the public interest."

These findings of the Commission joined with its assumption, unsupported by evidence, that the appellee companies might experience delay in restoring their automobile transportation facilities after the war (R. 17-18) are the basis upon which its order must be sustained, if it is sustained.

It has already been demonstrated that all the testimony of such witnesses as to the past need for appellant com-

panies' vessels meant was that there was in 1941 a need for the carrying capacity represented by those vessels. There was not even an attempt to show that had those vessels not been made available by one of the operating carriers, other vessels would not have been made available. The undisputed evidence is that other vessels would have been readily obtainable. Likewise all that the testimony of such witnesses as to the future need for appellant companies' vessels means is that they were of the opinion that the carrying capacity represented by appellant companies' vessels would be needed in the future. The Commission's finding of a future need, which is patently based on such testimony, cannot have any other meaning. The fountain, even when giving vent to prophecy, can hardly rise higher than its source.

These witnesses unequivocally admitted that they possessed no information as to when their companies would go back to the commercial production of passenger automobiles. They had no knowledge concerning the quantity of automobile carrying vessels that would be available for transportation if and when their companies resumed production. They had absolutely no knowledge of what the transportation conditions might be upon return of normal conditions. They had no knowledge of what the needs of their companies will be as related to the number of ships or ship carrying capacity that may be required when production is resumed. They showed a total lack of knowledge of the post-war shipping program being planned for the Great Lakes by the ship owners and operators (R. 222, 229, 239, 428, 431-432, 435).

As previously shown, the manufacture of automobiles for civilian use was terminated in January of 1942. Naturally vessels formerly devoted exclusively to the carriage of automobiles were largely diverted to other purposes since there were few automobiles to carry. Of course auto-

mobiles could still be transported on the decks of bulk carriers. There was uncontradicted testimony to the effect that the facilities of the D. & C. Company alone would be sufficient for the needs of the Army for the transportation of automobiles between Detroit and Lake Erie ports in 1943 (R. 478-479).

Each of the three appellee companies produced witnesses who testified as to the intention of the companies to supply adequate facilities for the transportation of automobiles on the Great Lakes when production is resumed.

Mr. Hewitt, vice president of the Nicholson Universal Steamship Company, testified: "The Nicholson Universal Steamship Company is known as a specialized carrier of new automobiles, and, with the cessation of hostilities, the Nicholson Universal Steamship Company intends to see that, for such tonnage as may be offered to it for transportation over the lakes, vessels are available to adequately handle such tonnage which may be offered" (R. 485).

He further testified that his company had practically reached a final agreement with one large bulk carrier through which a fleet of not less than 10 boats would be made available for the carrying of automobiles and that his company was pretty sure of having available not less than 30 boats when automobiles started moving again, with a reasonable certainty that it would have available more boats than would actually be required for the transportation of automobiles throughout the year including the peak periods, assuming that there would be peak periods in the future as in the past. He further testified he was of the opinion that his company would be able to take care of the situation as it might unfold from month to month and from year to year as it had done in the past (R. 483-485).

Mr. McMillan, the general manager of the D. & C. Company, testified that his company had in the past always sup-

plied the trade with sufficient equipment to take care of existing needs and that it fully intended to do likewise after the conclusion of the war; that at present the D. & C. Company was operating four vessels, all capable of transporting automobiles, that in 1941 the company operated six combined passenger and freight vessels and, in addition, four freight vessels for the carriage of new automobiles, and that it was the intention of this company to make such facilities or equivalent facilities available as might be required after the cessation of the war (R. 489-490).

Mr. Emblidge, vice president of the Great Lakes Transit Corporation, testified that that corporation had been operating as a common carrier on the Great Lakes since 1916, and that it is intended just as soon as the war is over to re-establish their carrier service at the earliest possible date so as to operate as fully as they had operated prior to the beginning of the war (R. 437-442).

Needless to say, the testimony of these witnesses as to the purpose of their respective companies to make available as needed the necessary transportation for automobiles on the Great Lakes stands undisputed.

As a matter of fact, what the future need for automobile carriers on the Great Lakes will be, and how rapidly it will develop, was at the time of the Commission's decision, and still is, a matter of pure speculation.

As has been demonstrated by the record, prior to the war there was always available an abundance of automobile carrying capacity which the appellee companies could have acquired if needed. It is a matter of common knowledge that after the last war there was a vast amount of unused shipping tonnage on the Great Lakes, with the result that a great number of ships were sold for scrap iron. It is also common knowledge that a far greater number of ships were constructed during the war just now ended, with the

result that there is every prospect there will be a correspondingly greater fleet of excess tonnage than existed at the end of World War I.

A ship can be converted to an automobile carrier in a very short time. Thus McCarthy testified that one of appellant companies' vessels was operated as a bulk carrier through the fall of 1939, was converted to an automobile carrier in the spring of 1940, and was operated "all during the season of 1940 by the D. & C. Navigation Company" (R. 120). Obviously, a ship can be converted into an automobile carrier between the close of navigation in one season and the opening of navigation in the next season.

Furthermore, appellant companies will not be dependent alone upon ships which must be converted to automobile carriers for carrying capacity when automobile production is resumed. Thus in the year 1943 the D. & C. Company alone carried 40,000 vehicles, which represented only about 75 percent of its capacity then available. In comparison with this the appellant companies carried no vehicles in 1943 and only 950 in 1942 (R. 521).

The keystone of the Commission's finding that the vessels of appellant companies will be needed to carry automobiles in the future is that automobile manufacture will be restored after the war to the point of creating a demand for lake transportation before the traditional automobile carrying ships will again be able to handle the traffic. That assumption is barren of any justification in the record. In view of the foregoing considerations, it is an exceedingly violent assumption.

The evidence of appellee companies was that they were uncertain as to when their operations would be resumed, and, as previously shown, the representatives of the automobile manufacturers testified positively that they did not know when the production of automobiles would again reach

the point requiring water carriage, yet the Commission assumed the latter would antedate the former. Such a conclusion is not only not supported by substantial evidence; it is not supported by any evidence and is therefore conjectural, speculative, arbitrary and capricious. Furthermore, it is directly contrary to any reasonable conclusion that may be drawn from the known facts.

It is impossible to reconcile the action of the Commission in this case with the disposition made of other and related matters. In *Lykes-Coastwise Line, Inc., Applications*, 260 I. C. C. 201 (decided Feb. 12, 1944), the steamship line involved, after years of operation between North Atlantic ports and Gulf port cities, sold its vessels to the British Government immediately prior to the January 1, 1940, "grandfather" date. The Lykes-Coastwise Line filed applications seeking rights to resume service. The Interstate Commerce Commission dismissed the "grandfather" application. As to the proof adduced relative to public convenience and necessity, Division IV had this to say (p. 205):

> "At the hearing, applicant also attempted to establish that public convenience and necessity required its service in the coastwise trade. Numerous witnesses representing commercial organizations, shippers, port authorities, and others testified as to the need for applicant's water carrier service. Applicant, however, is unable to procure any vessels to fulfill the present public need for water-carrier service, and any claims as to future public convenience and necessity at least are conjectural."

The petition by the Lykes-Coastwise Line for reconsideration was denied by the whole Commission on July 3, 1944.

In *Erie & St. Lawrence Corp. Contract Carrier Application*, 250 I. C. C. 767, the carrier sought "grandfather" rights as well as rights under the "interim clause" of the Act. The interim operations had to do with coastwise

service along the Atlantic Coast instituted in 1941. It submitted alleged proof of public convenience and necessity to establish present and/or future need for the continuance of such service. The Commission made this finding with respect thereto (p. 779):

> "The coastwise service along the Atlantic coast and the operation between Atlantic and Gulf ports instituted by applicant during 1941, hereinbefore described, have not been a part of the service described in the preceding paragraph. The performance of operations in the past is not in itself sufficient to show that the public convenience and necessity require continuance of such coastal operations to the extent that issuance of permanent authority is justified. The fact that the coastal operations were instituted at about the time of a shortage of larger craft in coastal shipping indicates that the need for applicant's services was a matter of war necessity. If applicant had vessels for such service, temporary authority might be granted under section 311 as amended by the Second War Powers Act, 1942. We will deny the application for such permanent authority."

It would seem that in the instant case the four dissenting Commissioners were fully warranted in the following statement made in the dissenting opinion (R. 19):

> "All of the conditions set forth in the record are abnormal due largely, of course, to the war. Most of the vessels, including those of applicants, formerly used in the transportation of automobiles on the Great Lakes have been converted for, and are being used in, the transportation of other commodities in connection with the war effort. It is indefinite as to how long present conditions will continue or whether applicants will be able to exercise the authority herein granted upon expiration of their existing temporary authority. In my opinion the decision of the majority is based upon too many assumptions and suppositions to be sound as a matter of law."

It is respectfully maintained that the Commission's find-

ing that there will be a need for the particular vessels of the appellant companies in the future, when automobile production for civilian use is resumed, is nothing but speculation.

The Commission has simply projected into the future its finding of a past need for appellant companies' vessels, which finding has no justification in fact except as a finding of a need of a carrying capacity represented by said vessels, without at the same time projecting into the future the past concomitant fact that such carrying capacity was always readily available to appellee companies from sources other than appellant companies. It made no finding that in the past other carrying capacity was not available to the appellee companies, had they not used the vessels of the appellant companies, as on the record of course it could not. It made no finding as to what the future need for automobile carrying capacity might be or how rapidly such need would develop. It made no finding as to whether appellee companies had made any plans to meet the future needs for automobile carrying capacity or as to the sufficiency of such plans to meet future needs. It made no finding that in the future appellee companies could not make available a sufficient carrying capacity without the use of appellant companies' vessels. Yet the determination of each of these matters is a necessary condition precedent to a finding that those vessels will be needed. Contrary to the reasonable import of all the known facts, it simply assumes that appellant companies' vessels will be needed in the future.

3.

Assuming Arguendo that the Commission's Finding Means That Appellant Companies' Presently Owned Vessels Will Be Needed as Automobile Carriers in the Future, Such Finding Would Not Justify an Ultimate Finding That Public Convenience and Necessity Require the Operation of Appellant Companies as Common Carries of Automobiles.

Having found that appellant companies' vessels were needed in the past, and that their operation would be needed in the future, the Commission immediately states the following conclusion (R. 17):

> "Refusal of applicants' right to initiate such operations * * * would according to this record deprive shippers of the necessary transportation facilities, which would not be in the public interest."

On the findings of the Commission, the only justification for this conclusion is the aforesaid finding that appellant companies' vessels will be needed. We have later demonstrated, pages 55-61 of this brief, that the claims of appellants that the Commission found that past service had been inadequate is wholly untenable.

The finding of a future need for appellant companies' vessels does not justify a finding of a future need for their services as common carriers for the following reasons:

A. It ignores the fact that a future need for the vessels may be met as it was in the past, by a chartering of those vessels to one or more of the authorized carriers.

B. The need found is commensurate neither in time nor quantity with the services authorized.

C. The effect of the Commission's action is to grant two "grandfather" rights upon the basis of one prior carrier operation.

D. In basing its finding of a need for the services of appellant companies on a finding of need for the vessels of those companies, the Commission has failed to consider and entirely ignored the effect upon the existing carriers of authorizing new carriers in the field.

We will discuss these reasons in order.

A.

In basing its finding of a future need for the services of the appellant companies on a finding of a future need for the vessels of those companies, the Commission ignores the fact that a future need for the vessels may be met, as in the past, by a chartering of these vessels to one or more of the authorized carriers.

As has been previously noted, the three vessels of appellant companies were chartered and put into operation as automobile carriers by the D. & C. Company as the need for additional carriers developed. They were originally old bulk carriers. Two were converted into automobile carriers and were chartered by the D. & C. Company in 1937 and from year to year thereafter, so long as automobiles for civilian use were being produced. The third vessel was converted from a bulk carrier to an automobile carrier in the spring of 1940 and was chartered by the D. & C. Company and operated as an automobile carrier during the 1940 and 1941 seasons, which was as soon and as long as it was needed for that purpose (R. 122, 161-167, 294-295, 181, 211, 313-315). All of the appellee companies gave evidence of their intention and capacity to supply the future need for automobile transportation when that need developed. They chartered vessels in the past and there is absolutely no reason to suppose they would not in the future should such course appear to be needed. There is not a syllable of evidence in the record to the effect that if the

three vessels are needed as automobile carriers in the future, they would not be chartered by one or more of the appellee companies for that purpose.

McCarthy himself testified that by reason of the small size and obsolescence of the vessels they could not be operated profitably as bulk carriers in normal times (R. 405); hence there would be strong economic reasons compelling their use as automobile carriers on charter if the need for their being so used should develop.

The appellant companies do not need Commission authority to charter the vessels to duly authorized carriers. As stated by Commissioner Miller, three other Commissioners concurring (R. 19):

> "The fact that applicants' vessels were used as they were to carry automobiles prior to the present emergency and may be needed for that service when the production of automobiles is resumed does not warrant the conclusion that there will be need for the *operation of such vessels by applicants as a new carrier in the field.* That will not increase the amount of service formerly provided. *Those vessels may be operated as formerly by existing authorized carriers under charter.* Adequate service has been provided by protestants in the past and there is nothing in the record to show that they will be unable to provide similar service in the future."

Thus if it be assumed that there will be a need for the three specific vessels for the carrying of automobiles in the future, such fact would not justify the finding of the Commission that the appellant companies must be authorized to operate as common carriers in order that the vessels be made so available.

The Commission has itself recognized this to be the case. Thus in *National Barge Co., Contract Carrier Applications,* 250 I. C. C. 806, in dismissing an application for a certificate of convenience and necessity because the ap-

plicant had theretofore engaged in the chartering of its vessels to other carriers, the Commission said, "If there is need for applicant's vessels they are available, as in the past, for charter by the carriers who provide the whole transportation service." See, also, *Bronx Towing Line, Inc., Contract Carrier Application*, 250 I. C. C. 614.

B.

The need found for the vessels is not commensurate either in time or in quantity with the services authorized and can be met by granting appellant companies temporary permits as Congress by section 311(a) of the Act clearly evidenced its intent any such need should be met.

As previously shown, the Commission assumed, without finding, that when automobile production is resumed, the appellee companies will not be able to supply the needs for carriage as rapidly as that need might develop. The assumption is only of a delay, and not of a continuing inability on the part of the appellee companies to meet the predicted need (R. 17-18). Yet to cover this assumed temporary hiatus between the need for and supply of carrying facilities, the Commission has granted to the appellant companies a certificate which permits them to operate as common carriers permanently and without limitation, for once the appellant companies operate under the certificate, their right to continue to operate cannot be terminated.

Furthermore, the Commission found a need for only the three vessels operated by appellant companies, yet the certificate granted constitutes an authorization to the appellant companies to put on not three vessels for which a need was found but an indefinitely greater number of vessels for which no need has been found. Thus, referring to a certificate issued under Section 309(c) of the Act, Section 309(d) provides in part as follows:

> "That no terms, conditions, or limitations shall restrict the right of the carrier to add to its equipment, facilities, or service within the scope of such certificate, as the development of the business and the demands of the public shall require. * * *."

Thus if the certificate is permitted to stand the door is left permanently open for the invasion of the field by a large number of additional vessels, which the record demonstrates has for the most part been largely oversupplied with automobile carrying facilities in the past. This would in all probability result not only in detriment to appellee companies but to the public as well, which is vitally concerned in the conservation of the earning capacity and financial resources of the carriers which serve its needs.

In *Texas & Pac. Ry.* v. *Gulf, C. & S. F. Ry.*, 270 U. S. 266, this Court said (p. 277):

> "It (Congress) recognized that preservation of the earning capacity, and conservation of the financial resources of individual carriers is a matter of national concern; that the property employed must be permitted to earn a reasonable return; that the building of unnecessary lines involves a waste of resources and that the burden of this waste may fall upon the public; that competition between carriers may result in harm to the public as well as benefit."

It is respectfully maintained that if the wholly unjustified assumption that there will be some delay on the part of the authorized carriers in meeting transportation needs when production of automobiles is resumed be conceded, and if it be further conceded that appellant companies' three vessels would not be chartered to meet such temporary need, nevertheless the Commission would not be warranted, on such grounds alone, in granting to the appellant companies the right to permanently invade the field with an indefinitely great number of vessels. The remedy prescribed would be wholly incompatible with the ailment found.

The need could be met by granting temporary permits to the appellant companies as in the past. Congress expressly provided for such permits in Section 311(a) of the Act, Appendix pp. 73-74). As the Act now stands, the Commission may until December 31, 1945, grant a temporary permit of such duration as it may specify. Assuming that the Second War Powers Act is not further amended, but that after December 31, 1945, the Commission may not grant such a permit for a period to exceed 180 days, such permit should amply cover any peak period in the 1946 shipping season. Any temporary hiatus in the supply of automobile carrying capacity due to the assumed inability of appellees to provide adequate facilities as rapidly as the needs of the manufacturers develop would be completely covered. By providing for such temporary permits and further providing that such permits shall create no presumption that corresponding permanent authority will be granted, Congress clearly manifested its intention that a temporary need for water carrier service should not be made the basis for a permanent certificate under Section 309(c) of the Act. The Commission has plainly disregarded this Congressional intent by issuing a permanent certificate upon the assumption that the existing carriers may not be able to promptly restore carrying facilities as rapidly as the need develops.

C.

The effect of the Commission's action is to grant two "grandfather" rights upon the basis of one prior carrier operation.

The Act requires a finding that the *services* are needed, not that particular equipment or vessels are needed. It was never contemplated by Congress that the owner of a vessel chartered to others and *not operating as a carrier*

should by reason of such ownership and chartering alone be entitled to a certificate of convenience and necessity as a matter of right or it would have so provided when it enacted the so-called "grandfather" provision of the Act, Section 309 (a), giving an applicant in operation as a carrier on January 1, 1940, the right to a certificate of convenience and necessity to continue such operations as a matter of course.

Congress undoubtedly knew that many carriers chartered vessels to use in their service as carriers. It is an old and long established practice.

Now nothing would seem clearer than that carriers would not charter vessels unless they were needed. But the Act is perfectly clear that the owner of a chartered vessel needed in the operation of a common carrier charterer is not entitled to a certificate of convenience and necessity as a matter of course. The owner of the vessel must have been an *operating carrier* on January 1, 1940, in order to obtain a certificate of convenience and necessity as a matter of right.

The Commission's finding that public convenience and necessity require the operation of the appellant companies has nothing more in the nature of fact to support it than that the vessels of the appellant companies were chartered and used by another carrier in the past. If the order of the Commission can be sustained in this case there would seem to be absolutely no reason why any vessel owner whose vessel was chartered by a common carrier in the past might not also obtain a certificate of convenience and necessity to operate in the future by the simple device of having witnesses testify that if the chartered vessels had not been used by the charterer, the remaining vessels of the charterer would not have been sufficient to meet the public needs (a fact which should be easily established since it would seem evident that carriers would not ordin-

arily charter vessels not needed by them in their operations), coupled with a prediction that such vessels will be needed in the future.

It is manifestly one thing to find that particular vessels were or will be needed to serve the public and another thing to find that the operation of the vessels by their owner as a common carrier is needed to serve the public. The finding of the need for the former will not alone justify the finding of the need for the latter. Yet that is exactly what the Commission has done in this case. It based its finding of a need of the services of the appellant companies as common carriers solely on the finding of a future need for the vessels of the appellant companies.

There is no finding by the Commission, and no evidence that would have supported such finding, that the public convenience and necessity would have been in the past or would be in the future better served by the operation of the appellant companies' vessels by the appellant companies rather than by the D. & C. Company, which formerly chartered them, or by any of the other properly certified carriers. There is no other finding which in any way tends to bridge the gap between the finding of a need for the vessels and the finding of a need for the services.

The practical effect of the Commission's order is to grant two "grandfather" rights upon the basis of one prior carrier operation.

Part II of the Interstate Commerce Act deals with common carriers by motor vehicle; Part III with common carriers by water. The provisions of the two parts are quite similar. Part II contains a "grandfather" clause similar to the "grandfather" clause in Part III.

In *Dixie Ohio Exp. Co. Common Carrier Application*, 17 M. C. C. 735, the applicant for a certificate of convenience and necessity under the "grandfather" clause of Part II

based its claim on its operation as a common carrier of motor vehicles, which vehicles were owned and operated by others under the direction of the applicant. In holding that the applicant was a common carrier by reason of such operation, even though the carrying vehicles were owned by others who actually physically operated them, the Commission said (p. 740):

> "If the vehicles of the owner-operators, while being used by the applicant, were operated under its direction and control, and under its responsibility to the general public as well as to the shipper, then its operations, in which such vehicles were employed, come within the phrase 'or by a lease or any other arrangement' of section 203 (a) (14), and applicant, as to such operations, was a common carrier by motor vehicle. The traffic transported in the vehicles of the owner-operators moved under bills of lading issued by applicant. The vehicles, while in applicant's service, were registered under applicant's operating authority and had applicant's name painted, or otherwise shown, thereon. Insurance covering them was arranged and paid for by applicant. Applicant's dispatchers or other employees directed the time and manner of the loading and unloading of the vehicles and also directed their movement over applicant's routes. We conclude that they were operated under applicant's direction and control and under its responsibility to the general public as well as to the shipper, and that applicant, as to its operations in which such vehicles were employed, was a common carrier by motor vehicle as defined in section 203 (a) (14)."

On the authority of the foregoing case the Commission uniformly denied "grandfather" rights to such owner-operators who had operated for common carriers.

In *U. S.* v. *Rosenblum Truck Lines*, 315 U. S. 50, this Court sustained the action of the Interstate Commerce Commission in refusing to grant certificates of convenience and necessity to certain applicants for the operation of

motor vehicles as common carriers. The applicants were the lessors or owners of vehicles which were utilized, operated and controlled by established common carriers by motor vehicle and sought a certificate of convenience and necessity under the "grandfather" clause in Part II. It will be observed that the applicants were in practically the same position as the appellant companies in this case in that they owned and had operated under the supervision and control of the authorized carrier certain motor vehicles which were used by the authorized carrier in the transportation of goods. In fact, they had more to do with the operation of the vehicles which they owned than the appellant companies had to do with the operation of vessels which they owned, for the D. & C. Company, not the appellant companies, operated the chartered vessels (R. 115-120). This Court in holding that the applicants were not entitled to a certificate of convenience and necessity said (p. 54):

> "To hold that appellees, who performed part of that complete transportation service for those common carriers under agreements with them, acquired contract carrier 'grandfather' rights over the same line entitling them also to serve the public is to ascribe to Congress an intent incompatible with its purpose of regulation. The result would be to create in this case two services offering transportation to the public when there had been only one on the 'grandfather' date, without allowing the Commission to determine if the additional service was in the public interest. And, instances can readily be imagined where a single common carrier might utilize the services of several operators such as appellees. Automatically to grant contract carrier rights to such operators might result in such a wholesale distribution of permits as would defeat the very purpose of federal regulation."

The doctrine of that case was reaffirmed by this Court in *Thomson* v. *United States;* 321 U. S. 19, at page 24.

While the Commission does not base its order on the "grandfather" clause of Part III in the instant case, the effect of the order is the same as if it had been granted under that clause. By finding that there was a need for the chartered vessels as the basis, and the only basis, for its finding of a need for the services of the appellant companies, the Commission simply creates two operations where only one previously existed. In so doing the Commission has manifestly taken a position contrary to that taken by it under Part II of the Act dealing with common carriers by motor vehicle.

It has further taken a position contrary to that heretofore taken by it under Part III of the Act dealing with common carriers by water in the case of *National Barge Company Contract Carrier Applications*, 250 I. C. C. 806, *supra*, where in denying an application for a certificate of convenience and necessity it held that if there was a need for the applicant's vessels, they were available, as in the past, for charter by the carriers who provided the whole transportation service.

D.

In basing its finding of a need for the services of appellant companies on a finding of a need for the vessels of those companies, the Commission has failed to consider and entirely ignored the effect upon existing carriers of authorizing new carriers in the field.

The Commission has made a finding of the need for the services of the appellant companies as common carriers in the future, when its report demonstrates that it gave no consideration to the effect upon the rights and property of the duly authorized carriers which have been long operating in the field, when the consideration of such rights is, according to prior decisions of the Commission and to decisions of this Court, a matter of first importance.

This fact amply demonstrates the wisdom of the rule which requires the Commission to make the necessary factual findings to support its ultimate finding. It is only by an adherence to such rule that the courts, which are charged by Congress with the duty of reviewing the validity of the Commission's orders, can intelligently discharge that duty. Here by baldly predicating its ultimate finding of a necessity for the services of the appellant companies as common carriers upon its finding of a need for the operation of their vessels, the Commission demonstrates that it has entirely failed to consider the effect of its order on the carriers which for many years have been affording the public a service in the field. Certainly there is nothing in the Commission's findings to indicate that it gave the slightest consideration to that matter. Of course the Court is not warranted in assuming that it did, otherwise it might just as well assume in every case that the Commission gave proper consideration to all factors involved and entirely dispense with the necessity of findings to show what facts or theories formed the basis of and actuated the Commission's order.

Relative to the principles which govern the determination of whether a certificate of convenience and necessity should issue to a new carrier in the field, the whole Commission in *Philadelphia-Detroit Lines, Inc., Extension—Detroit*, 26 M. C. C. 729, quoting from *Construction by San Antonio & Aransas Pass Ry.*, 111 I. C. C. 483, and from *Texas & N. O. R. R.* v. *Northside Ry.*, 276 U. S. 475, said (p. 733):

> "The question, in substance, is whether the new operation or service will serve a useful public service, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without

endangering or impairing the operation of existing carriers contrary to the public interest."

The following statement from *C. & D. Oil Co. Contract Carrier Application*, 1 M. C. C. 329, is peculiarly applicable to the present situation (p. 332):

> "We think that, in order to foster sound economic conditions in the motor-carrier industry, existing motor carriers should normally be accorded the right to transport all traffic which they can handle adequately, efficiently, and economically in the territories served by them, as against any person now seeking to enter the field of motor-carrier transportation in circumstances such as are here disclosed. It will be noted that applicants do not propose a service which is in any way particularly adapted to the requirements of the shipper or consignee, or in fact which differs in any way from the service now performed in this traffic."

The above statement was quoted and its principles followed in *Carr Contract Carrier Application*, 2 M. C. C. 263, 269.

Relative to this same subject, the Court in *Texas & Pac. Ry.* v. *Gulf, etc., Ry.*, 270 U. S. 266, said (p. 277):

> "It (Congress) recognized that preservation of the earning capacity, and conservation of the financial resources, of individual carriers is a matter of national concern; that the property employed must be permitted to earn a reasonable return; that the building of unnecessary lines involves a waste of resources and that the burden of this waste may fall upon the public; that competition between carriers may result in harm to the public as well as in benefit * * *."

In *Texas & N. O. R. R.* v. *Northside Ry.*, 276 U. S. 475, the court said (p. 479):

> "The purpose of paragraphs 18 to 22 is to prevent interstate carriers from weakening themselves by constructing or operating superfluous lines, and to protect

them from being weakened by another carrier's operating in interstate commerce a competing line not required in the public interest."

In accord therewith see *N. Y. Central Securities Co.* v. *U. S.*, 287 U. S. 12, at page 25.

In the case at bar the court below said (R. 82):

"The court is also aware of the basic purpose of the Transportation Act of 1920, in that 'it recognized that preservation of the earning capacity and conservation of the financial resources of individual carriers is a matter of national concern; that the property employed must be permitted to earn a reasonable return; that the building of unnecessary lines involves a waste of resources, and that the burden of this waste may fall upon the public; that competition between carriers may result in harm to the public as well as in benefit • • •. *Texas & Pacific R. R. Co.* v. *Gulf, Colorado and Santa Fe R. R. Co.*, 270 U. S. 266, 277, also *Texas & New Orleans R. R. Co.* v. *North Side Belt R. R. Co.*, 276 U. S. 475, 479'."

The effect of the Commission's finding and order is to introduce new and competing carriers into the field of the transportation of automobiles on the Great Lakes and to dilute the available traffic which in the past has been adequately handled by carriers already in the field.

Regulation of public utilities is based on the theory of regulated monopoly, rather than competition, and before a new utility can be allowed to enter the field and take any business from another, a definite need for the *services* of such additional utility should be shown. Congress has specifically required the Commission to find a need for such services.

As previously demonstrated, the Nicholson Universal Steamship Company had a very large unused automobile carrying capacity in 1940, one of the best years for automo-

bile traffic in a number of years preceding 1941. The record further shows that even though the year 1937 ranked first in automobile production in the decade of the 1930's, the Nicholson Company found that the demand for automobile carriers did not warrant the retention of certain of their vessels exclusively for that purpose and they were converted to bulk carriers (R. 549-550). As already demonstrated, the D. & C. Company put on automobile carrying vessels whenever and as fast as the need therefor developed.

The record is totally barren of any showing that the existing carriers did not supply adequate automobile carrying facilities at all times in the past. It shows that in every year there was unused automobile carrying capacity held by the operating carriers except during the peak of the 1941 and possibly the peak of the 1940 seasons.

There is a total lack of evidence in the record to justify the entry of new carriers in the field. The existing common carriers have been in the automobile carrying field for many years. Their investment in automobile carrying facilities is entitled to some consideration and protection. On the other hand, the appellant companies, when the opportunity was open to them, did not engage as common carriers of automobiles and assume the risks and burdens incident thereto. They preferred to charter their vessels to an existing carrier which did assume such risks and burdens.

As previously shown, the three appellee companies offered uncontradicted evidence that they intended to continue in the automobile carrying business and to use every effort to provide adequate automobile carrying facilities as and when the need therefor should develop in the future. If the future should develop a need for the automobile carrying capacity of the appellant companies' vessels there

is no reason to suppose those vessels could not be chartered to and used by the existing duly authorized carriers. There was no showing or attempt to show that the operation of the appellant companies' vessels would be more satisfactorily conducted from the standpoint of the public by the appellant companies than by the present carriers. There was no showing or attempt to show that the operation of the appellant companies' vessels by the D. & C. Company was less efficient or less satisfactory from the public standpoint than would have been the operation by the appellant companies themselves.

It is respectfully maintained that the patent failure of the Commission to make any reference to the effect its order might have upon the presently duly authorized carriers demonstrates that the order was made without consideration of one of the most vital problems which the Commission under the law is required to concern itself with before admitting additional carriers to the field.

III.

ANSWERING CERTAIN ARGUMENTS OF APPELLANTS.

The first matter to be noticed in connection with the briefs filed on behalf of appellants is that in both briefs the effort is made to sustain the Commission's order, not on the basis of the Commission's basic findings of fact, but on the basis of what appellant companies contend is shown by the evidence in the record and what the Commission contends is disclosed by the report.

This effort is of course made necessary because the basic findings of the Commission will not, as above demonstrated, support its ultimate finding and consequent order.

Thus the second proposition in appellant companies' brief is:

"The Commission was justified in its conclusion on the question of public convenience and necessity as this conclusion could reasonably be reached on the evidence of record." (Brief, p. 24.)

The Commission's brief varies from this proposition slightly by claiming that the order has "a rational basis as disclosed by its report." (Brief, p. 36.)

Both of these propositions are tantamount to a confession that the Commission's *findings* do not support its order and neither proposition is sound in law. We have previously quoted from the authorities establishing the principle that the ultimate finding of future convenience and necessity must be supported by basic findings of fact, and if not so supported cannot be sustained.

In addition to those authorities we cite the following as being particularly pertinent here.

In *Atchison Ry.* v. *United States*, 295 U. S. 193, this Court, in setting aside an order of the Commission, said (pp. 201-202):

> "*Its report does not disclose the basic facts* on which it made the challenged order. This court will not search the record to ascertain whether, by use of what there may be found, *general and ambiguous statements in the report* intended to serve as findings may by construction be given a meaning sufficiently definite and certain to constitute a valid basis for the order. *In the absence of a finding of essential basic facts, the order cannot be sustained. Florida* v. *United States*, 282 U. S. 194, 215. Recently *this court has repelled the suggestion that lack of express finding by an administrative agency may be supplied by implication. Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 433.

In *United States* v. *B. & O. R. Co.*, 293 U. S. 454, this Court said (pp. 463-464):

> "The primary question of fact presented for de-

termination was, as the report of the Commission states, 'whether the use of locomotives equipped with hand reverse gear, as compared with power reverse gear, causes unnecessary peril to life or limb.' The report discusses, at some length, the alleged advantages and disadvantages of the two classes of reverse gear and the expense which the proposed change would entail; and concludes with 'findings' that, to a certain extent, the change should be made. But whether the use of any or all types of steam-locomotives 'equipped with hand reverse gear as compared with power reverse gear causes unnecessary peril to life or limb,' *is left entirely to inference.* This complete absence of *'the basic or essential findings* required to support the Commission's order' renders it void."

In *Interstate Commerce Commission* v. *Chicago, Burlington and Quincy Railroad Co.*, 186 U. S. 320, the Court said (pp. 341-343):

"Being then constrained to the conclusion that the order of the Commission was not sustained by the *facts upon which it was predicated*, we cannot enter into an independent investigation of the facts, even if it be conceded the record is in a condition to enable us to do so, *in order that new and substantive findings of fact may be evolved, upon which the order of the Commission may be sustained. Louisville &c. R. R. Co.* v. *Behlmer*, 175 U. S. 648-675."

Thus this Court has definitely held that where the findings do not support the order it will not search the record to see whether new findings might be evolved which would sustain the order. It will not search the record to ascertain whether general and ambiguous statements intended to serve as findings may be made sufficiently definite and certain to constitute a valid basis for the order. It will not treat as a finding a discussion of a subject in the report by which the finding is left to inference. It will not supply a finding by implication.

Manifestly the foregoing cases are eminently sound. It is the function of the Commission to make the findings necessary to sustain its order. It is the function of the Court to determine whether the findings are sustained by substantial evidence, and if so, whether they sustain the order. It is not the function of the Court to make findings, for should the Court make a finding which it conceived the evidence would support, it cannot know if the Commission would have made the finding, if in fact it did not make it. Furthermore, in such case the Court would be invading the field left to the Commission, unless perchance the finding was such as, in the opinion of the Court, the Commission could not on the record fail to make.

Substantial portions of the briefs of both the appellant companies and of the Commission consist of a search of the record and the advancement of reasons which it is conceived might, in the mind of the Commission have substantiated its ultimate finding of convenience and necessity. This is, of course, a perfectly futile endeavor. The failure of the Commission to make the necessary findings cannot be so remedied. In the absence of findings it cannot be determined on what consideration the Commission acted. It has been demonstrated that there is a lack of findings to sustain the order of the Commission.

One or two points in appellants' briefs warrant further consideration.

1.

The Commission made no finding that the service rendered by appellees in the past was inadequate.

It is contended by appellants in effect that the Commission found the service rendered by appellees in part inadequate, and that this finding is sufficient to support the Commission's order. (Appellant companies' brief, p. 27:

Commission's brief, p. 46.). We quote from the report of the Commission all references therein which can be considered as having any bearing on the so-called inadequacy of the service.

The Commission said (R. 14):

> "One of the automobile manufacturers was subjected to delays in the transportation of motor vehicles by water during 1941 from Detroit to Lake Superior ports."

Further on in the report it said (R. 14):

> "Prior to the war, the peak period for the movement of automobiles on the Great Lakes commenced in September or early October, with the production of new models. In 1940 and 1941, there were delays ranging from 2 to 4 days in the loading of the automobiles from the docks at Detroit incident to the congestion of such traffic and the inability of the water carriers to handle it promptly, which caused delays in delivery at final destination and resulted in numerous complaints from automobile dealers and distributors. Because of such delays, it was necessary at times to move by motortruck automobiles which had been previously delivered to the docks at Detroit for water transportation."

Again it said (R. 15):

> "At the further hearing, it showed through representatives of two dealers in certain makes of automobiles and trucks manufactured prior to 1942 by the Chrysler Corporation, that these dealers received shipments of motor vehicles by water at Cleveland in 1941, most of which were handled by this protestant; that they experienced no delays to such shipments, and that the service was satisfactory."

And finally (R. 17):

> "At certain times during the period prior to 1942, there were insufficient vessels, including applicants' vessels, fully to meet the needs of shippers of motor vehicles and similar situations may likely arise at

such times in the future after the war upon the resumption of normal production of motor vehicles."

Now, while mentioning some delays in loading at Detroit, it should be noted that the only ports of delivery which the Commission mentioned as involved in delay were the Lake Superior ports where it says one manufacturer was subjected to delay in 1941. On the other hand, the Commission mentions the testimony to the effect that deliveries made to Cleveland in 1941 were not subjected to delay and that the service was satisfactory. Obviously referring to the peak season, which "commenced in September or early October," the Commission mentions delays in loading at the docks in Detroit ranging from 2 to 4 days.

Representatives of three automobile companies were called as witnesses of appellants, who testified that if appellant companies' vessels had not been in operation in 1941, the remaining vessels in the service could not have taken care of the traffic.

The representative of the Ford Company did not testify as to any delays in either 1940 or 1941 (R. 220-223). The representatives of the Chrysler, Hudson and Pontiac companies testified as to some delay at the peak of the 1941 season (R. 227, 230, 237-238, 434) but none testified to any delay in 1940. Witnesses representing drive-away companies, driving cars away from the docks at Buffalo and Cleveland, testified to some delay in 1940 and 1941, some without specifying the time of the delay, others specifying the delay as at the peak of the 1941 season (R. 246, 262, 269, 271). One mentioned a delay in 1940 due to weather conditions (R. 262); one said the delay was not wholly attributable to the shipping companies; "it was during the peak load that comes upon all carriers in business at times" (R. 271). This same witness also testified

that on one occasion, in November 1941, he picked up some automobiles at the docks in Detroit and took them to Cleveland. He attributed this in part to weather conditions (R. 268-270). This was the only testimony as to diversion of traffic. At one time in 1941 so many cars were put on the docks at Buffalo that the drive-away company could not take care of them and some were sent by rail from there (R. 272). One, and only one, witness, who was from a drive-away company, testified that there was a delay of "from two or three or four days" in getting cars from the dock at Detroit down to Buffalo (R. 254).

Since none of the representatives of the automobile companies testified to any delay at the docks in 1940, it is fairly evident they did not consider there was any such delay. The time of the delay, when fixed by the witnesses, was at the peak of the 1941 season, in October or November. There was a very sharp peak in traffic in 1940, beginning the latter part of October and ending in November (R. 597-598) but with this very sharp peak the record does not show any complaint of the manufacturers as to that year.

The most that the foregoing testimony, which was all the testimony on the subject of delay, would justify in the way of a finding is that there was some little delay at the peak of the season in 1941. The record is clear that 1941 was the heaviest year of automobile traffic since the 1920's, 1937 being the second heaviest year (R. 549-550, 321, 594).

Referring to the testimony of all the foregoing witnesses of the automobile manufacturers and of the drive-away companies, the Commission said (R. 14):

> "*In substance*, it is that applicants' vessels were essential to the transportation of automobiles from Detroit to Lake Erie ports in the past; that it would not have been possible without them for the water carrier to have handled the automobiles offered for transportation in 1940 and 1941 and that they will again

be needed when normal production of motor vehicles is resumed. Similar testimony was offered on behalf of motor common carriers which handle from Buffalo to Eastern destinations automobiles transported by water to that point over the Great Lakes."

The Commission characterized the testimony *in substance* as being testimony that appellant companies' vessels were needed in the past and that they will be needed in the future. Manifestly that in substance was all it was. Had the Commission considered it was testimony establishing inadequacy of past service, it would not have so limited the above summary of it, and would have made some statement to the effect that it at least indicated inadequacy of past service. In view of the facts as above shown, regarding the testimony, the reason why the Commission did not find that the services supplied by the existing carriers in the past was inadequate is manifest.

The testimony was offered for the purpose of establishing a need for appellant companies' vessels, and the Commission used it as the basis of its finding as to that need and as the basis of no other findings. Of course, as already demonstrated, the need established was only for a carrying capacity represented by the vessels but this does not change the fact that the Commission used it only for the purpose of establishing a need for the vessels.

The dissenting members of the Commission stated:

"Adequate service has been provided by protestants in the past." (R. 19.)

Had the majority of the Commission been inclined to disagree with the minority on this point they would have undoubtedly said so. The Commissioner who dissented from the report of Division IV did not state that there had been any inadequacy in the past service. The Commission itself has recognized that the adequacy of a service is

not to be determined by contingencies which may arise during peak periods of traffic. Thus in *Cater's Motor Freight System, Inc., Extension—Wenatchee*, 40 M. C. C. 292, the Commission said (p. 294):

> "While we recognize the desirability of motor carriers making every effort to supply for the public a sufficient amount of equipment to take care of every reasonable demand, we must also acknowledge that large financial investments are required if there is to be sufficient equipment to take care of the maximum demand that can arise under the circumstances of peak movements. On the other hand, if we were to authorize this applicant to enter the field, it would create no new business but would serve only to further divide the existing business during the entire period of movement. Public convenience and necessity refer to a demand that is reasonably constant and determinable rather than to the extraordinary peaks that may rise in the course of any business."

It is respectfully maintained that the Commission made no finding of inadequacy in past services. Whether it could have made such finding is immaterial in this suit since this Court has repeatedly said it will not make findings for the Commission nor search the record to determine if an ambiguous treatment of a subject might be considered as a finding.

It was the view of the court below that the Commission had made no finding as to inadequacy of service, for it said (R. 88):

> "Whether it is economical and in the public interest to expect or require water carriers to maintain, throughout the navigation season, the carrying capacity needed for the peak load in September or early October, we have no occasion to inquire, and the answer is within the competency and, if upon evidence, within the exclusive prerogative of the Commission.
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> "The effect of the Commission's finding and order

is to introduce new and competing carriers into *a field adequately served*, without the definite need for the services being shown, and this collides with the clearly defined purpose of the Transportation Act already indicated.''

The court definitely recognized that the Commission, if acting on evidence, had power to determine whether it was economical and in the public interest to require water carriers to maintain throughout the navigation season the carrying capacity needed for the season's peak. It would not have felt at liberty to state, as it did, that the field had been adequately served in the past, if the Commission had made a finding to the contrary, without at least examining the evidence and stating that there was no substantial support in the evidence for the finding. The contention of appellants that the court usurped the function of the Commission in stating that the past services had been adequate when the Commission had taken the contrary view is wholly unwarranted. (Appellant companies' brief, pp. 21-22; Commission's brief, p. 48.) There was no finding that past services were inadequate nor was there any finding that the carriers serving the field must be constantly prepared to meet, without any delay, the demands of the peak of the season. Appellants assume findings not made and then charge the court with a failure to observe them.

2.

Appellants err in their claim that the court below held that it is the policy of the Act to forbid any new competition in a field which has been adequately served.

It is contended by appellants that the court below took the position that it is the policy of the Interstate Commerce Act to forbid new competition in any field which has been

adequately served by the existing carriers, and that in so doing the court too narrowly construed the Act. (Commission's brief, pp. 20, 28-36; Appellant companies' brief, pp. 22-24.)

Appellants have misconstrued the court's position. What the court said is this (R. 88):

> "The effect of the Commission's finding and order is to introduce new and competing carriers into a field adequately served, *without the definite need for the services being shown*, and this collides with the clearly defined purpose of the Transportation Act already indicated."

The court said that the field had been adequately served in the past, and that the Commission, without a definite need for their services being shown, had introduced new and competitive carriers in the field. The court did not say that a need for new and competing carriers in the field could not be shown in any case where the past service had been adequate; it said that such need had not been shown in this case. Appellees contended in the court below, as they contend here, that whatever may be said as to the soundness, on the record, of the Commission's findings as to a need for appellant companies' vessels, those findings alone were not sufficient to show a need for the services of appellant companies as new and competing carriers in the field. It was contended that there were no findings showing a need for the services of appellant companies. The court below took that view and stated that the service had been adequate in the past, and that the Commission acted in contravention of the Act when it admitted new carriers into the field without a definite need for the service being shown.

This goes back to the oft-repeated statement of this Court that the Commission's orders must be supported by adequate basic findings of fact. Such findings were clearly

missing in the instant case, hence the position of the court below. There were no findings showing the need for the appellant companies' services as carriers in the field.

Whether any findings, other than findings of inadequacy of past service, would justify the admission of new and competing carriers into the field, we do not have to consider here, since there were no other such findings. It might be well to note, however, that in the case of *Interstate Commerce Commission* v. *Parker*, 65 S. Ct. 1490, it is rather strongly indicated that, except possibly in very unusual circumstances, a finding of inadequacy of past service would be required. In that case the majority of the Court sustained the issuance of a certificate of convenience and necessity to a common carrier by motor, a subsidiary of the Pennsylvania Railroad Company, to operate on routes parallel to certain lines of that railroad company for the purpose of affording a service coordinated with that offered by the railroad company and different in nature from that offered by the motor carriers in the field. The majority of this Court said (p. 1495):

> "The contention of appellees, protestant motor carriers, is that since no evidence was offered as to the inadequacy of the presently duly certificated motor carriers to serve the railroad's need, there was a failure of proof as to convenience of and necessity for a new motor truck operation in the territory. • • • Since, however, on adequate evidence the Commission found that the motor service sought was of a *different character* from the existing motor service *and not directly competitive or unduly prejudicial to the already certificated motor carriers*, 42 M. C. C. 725, 726, we hold that the Commission had statutory authority and administrative discretion to order the certificate to issue."

Mr. Justice Black and Mr. Justice Rutledge concurred in a dissenting opinion of Mr. Justice Douglas who dis-

agreed with the majority opinion upon the ground that as a matter of fact the services which the newly certificated motor carrier was authorized to render were not sufficiently different in kind from that rendered by the other motor carriers in the field to justify the Court in sustaining the Commission's action. In the course of his opinion Mr. Justice Douglas said (p. 1497):

> "I can find in the Act no indication whatsoever that railroad applicants for a motor vehicle certificate are to be considered any more favorably than any other type of applicant. Yet it is plain that this decision permits just that. For if any applicant other than a railroad affiliate were before the Commission with an application for a certificate to serve this precise territory, *it would have to show that existing transportation facilities were inadequate to serve the needs of the public efficiently.*"

The implication of the majority opinion would seem to be in accord with the foregoing statement, since the certification was justified upon the ground that the service to be rendered was different in kind from that of other carriers in the field. Had the service been the same in kind, the adequacy of past service of existing carriers would have seemed to be a bar to the certification of a new carrier in the field.

It should also be noted that the majority opinion mentions the fact that the Commission had found upon adequate evidence that the service sought would not be "directly competitive or unduly prejudicial to the already certificated motor carrier."

In the instant case, if the certification stands, the appellants will be in direct competition with the presently certificated carriers, and, as already pointed out, there is not the slightest evidence that the Commission even considered the effect of its action on the carriers already

in the field, and this in face of the fact that the record clearly demonstrates that for the most part the field has been largely over-supplied with automobile carrying facilities in the past.

Inasmuch as each of appellees' briefs has gone outside the record to inform this court that appellee, Great Lakes Transit Corporation, has sold its last four vessels and is now without ships, it is believed that said appellee will be indulged by this court if it similarly departs from the record, on its own behalf alone, and not for any other appellee, in order to reveal the entire situation. Great Lakes Transit Corporation, on May 23, 1945, entered into a contract to sell said vessels to a Chilean buyer, by the terms of which those obsolete vessels are to be rehabilitated and fitted out for salt water service, the expense of which work is to be paid out of the purchase price, which was increased for that purpose. The purchase price to be received this fall will be deposited in a construction reserve fund, pursuant to the Merchant Marine Act of 1936, as amended, 46 U. S. C. 1161(b)(c), so that if and when the fund is used for the construction or purchase of other ships, the income tax which normally would arise upon the profit to be made in the transaction will be avoided. The establishment of such a fund was authorized by the Executive Committee of the Board of Directors of Great Lakes Transit Corporation on May 29, 1945. This certificated appellee has not abandoned its intention of continuing in the shipping trade.

CONCLUSION.

In conclusion we think this case may be adequately summed up as follows:

1. The Commission made a finding that the services of the appellant companies' three vessels were needed in the

past. This finding is an ambiguous finding and all that the evidence will justify in respect to it is that there was a past need for the carrying capacity represented by the three vessels of the appellant companies. The record shows by uncontradicted evidence that had the three vessels of the appellant companies not been available in the past, other vessels could readily have been obtained to replace their carrying capacity.

2. The Commission found that there will be a need for the appellant companies' vessels in the future when the production of automobiles for civilian use is resumed. The finding of this need is based upon the ambiguous finding that there was a past need for the appellant companies' vessels, plus a prediction or speculation that when production of automobiles is resumed there will be a need for as great a carrying capacity for automobiles as there was in the year 1941. Coupled with this prediction is the assumption that the need for automobile carrying capacity will develop more rapidly than boats can again be made available for the transportation of automobiles. When it is considered that after the first World War there was a vast amount of unused shipping tonnage on the Great Lakes, with the result that great numbers of ships were sold for scrap iron, and that the shipping tonnage produced during the war just ended was far greater than that produced during the first World War, and that ships can be converted into automobile carriers within two or three months' time, it is manifest that the assumption is a violent one.

The keystone of the finding of the Commission of a future need for appellant companies' vessels is its assumption that automobile manufacture will be restored after the war to the point of creating a demand for lake transportation before the traditional automobile carrying fleets will again be able to handle the traffic. That assumption

is barren of any justification of record. There was no testimony as to when either of those operations will be resumed. The appellee carriers testified that they were uncertain as to when their operations would again be normal, and the representatives of the automobile manufacturers positively testified that they did not know when production of automobiles would again reach the point of requiring water carriage, yet the Commission assumed that the latter would antedate the former. Such a conclusion is not only not supported by substantial evidence, it is not supported by any evidence and is therefore conjectural, speculative, arbitrary and capricious.

3. Having found that there will be a need for the vessels of the appellant companies when the production of automobiles is resumed, the Commission found from this "need" that the *service* of the appellant companies as common carriers will be needed. The gap between the finding of a future need for the vessels and of a finding for the future need of the services of the appellant companies is unbridgeable. Whatever need there was for the appellant companies' vessels in the past was satisfied through a charter of those vessels to the D. & C. Company. A certificate of convenience and necessity is not needed to permit the appellant companies to charter them to one of the authorized carriers in the future. All three of the appellee companies offered evidence of their intention to supply adequate automobile carrying capacity in the future. If the vessels of the appellant companies have been then reconverted to automobile carriers, there is no reason to suppose that they cannot be chartered to some of the presently authorized carriers if need for that should develop. By finding a future need for the appellant companies' three vessels, and as a result thereof finding a need for the services of the appellant companies as carriers and granting to them a certificate of con-

venience and necessity, the Commission has opened the door for the appellant companies to put on, not three additional vessels for which a need to fill an assumed temporary hiatus in the supply of automobile carriers has been found, but an indefinitely greater number of vessels for a time indefinitely long for which no need has been found. If the order of the Commission is permitted to stand, it cannot be revoked in the future, but the door is left permanently open for the invasion of the field by a large number of additional vessels when the record demonstrates that the field has for the most part been largely oversupplied with automobile carrying facilities in the past. This will result not only in detriment to the appellees but to the public as well, which is vitally concerned with the conservation of the earning capacity and financial resources of the carriers which serve its needs.

4. The Commission has found a need for the services of the appellant companies as common carriers in the future without any finding that the service rendered by the duly authorized carriers has been inadequate in the past and when the record demonstrates a large oversupply of automobile carrying vessels during the entire decade of the 1930's.

5. The Commission has made a finding of the need for the services of the appellant companies as common carriers in the future, when its report demonstrates that it gave no consideration to the effect upon the rights and property of the duly authorized carriers which have been long operating in the field, when the consideration of such rights is, according to prior decisions of the Commission and to decisions of this Court, a matter of first importance.

6. Although the appellant companies possess temporary operating rights which may be easily extended, if needed, until normal conditions are restored, the Com-

mission has seen fit forthwith to grant them permanent rights, stating that it would be placing an undue burden on them to compel them to renew their application and present their evidence at a later date (R. 18). Thus the Commission has let the convenience of the appellant companies outweigh the importance to the existing and long established carriers and to the public of having the question of whether future convenience and necessity require their operation as common carriers determined at a time when many of the important considerations involved are not, as when the order was entered, the subject of conjecture and speculation, but can be reasonably weighed and determined in the light of existing facts and circumstances susceptible of definite proof. Such mere convenience of a party can never be a justification for action which may result in permanent and irremediable injury to both the established carriers and the public.

It is respectfully submitted that the judgment of the court below is correct and should be affirmed.

Respectfully submitted,

ANGELL, TURNER, DYER & MEEK,
2104 Dime Building,
Detroit 26, Michigan;

MAYER, MEYER, AUSTRIAN & PLATT,
231 South La Salle Street,
Chicago 4, Illinois,

POPE & BALLARD,
120 South La Salle Street,
Chicago 3, Illinois,
Of Counsel.

JAMES TURNER,
WILLIS C. BULLARD,
2104 Dime Building,
Detroit 26, Michigan,
S. S. EISEN,
140 Cedar Street,
New York 6, New York.
ISAAC H. MAYER,
CARL MEYER,
231 South La Salle Street,
Chicago 4, Illinois,
ERNEST S. BALLARD,
120 South La Salle Street,
Chicago 3, Illinois,
Attorneys for Appellees.

October 2, 1945.

APPENDIX.

The Transportation Act of 1940, 54 Stat. 899, inserts before Part I of the Interstate Commerce Act the following declaration of National Transportation Policy:

> "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

Section 309 of Part III of the Interstate Commerce Act, as enacted by the Transportation Act of 1940, 54 Stat. 941, 49 U. S. C. A., Section 909, provides in part as follows:

> "(a) Except as otherwise provided in this section and section 311, no common carrier by water shall engage in transportation subject to this part unless it holds a certificate of public convenience and necessity issued by the Commission: *Provided, however,*

That, subject to section 310, if any such carrier or a predecessor in interest was in bona fide operation as a common carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made and has so operated since that time (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if applications for such certificate is made to the Commission as provided in subsection (b) of this section and prior to the expiration of one hundred and twenty days after this section takes effect. * * *

"(b) Application for a certificate shall be made in writing to the Commission, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission shall, by regulations, require.

"(c) Subject to section 310,* upon application as provided in this section the Commission shall issue a certificate to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if the Commission finds that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the pro-

* Section 310 provides that no person shall hold both a certificate of convenience and necessity for operation as a common carrier by water and a permit of convenience and necessity for operation as a contract carrier by water unless the Commission finds, for good cause shown, that both a certificate and a permit may be so held consistently with the public interest and with the national transportation policy declared in the Act.

posed service, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied.

"(d) Such certificate shall specify the route or routes over which, or the ports to and from which, such carrier is authorized to operate, and, at the time of issuance and from time to time thereafter, there shall be attached to the exercise of the privileges granted by such certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such other terms, and conditions, and limitations as are necessary to carry out, with respect to the operations of the carrier, the requirements of this part or those established by the Commission pursuant thereto: *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to add to its equipment, facilities, or service within the scope of such certificate, as the development of the business and the demands of the public shall require, or the right of the carrier to extend its services over uncompleted portions of waterway projects now or hereafter authorized by Congress, over the completed portions of which it already operates, as soon as such uncompleted portions are open for navigation.

"(e) No certificate issued under this part shall confer any proprietary or exclusive right or rights in the use of public waterways."

Section 311 of said Part III, 49 U. S. C. A., Section 911, provides in part as follows:

"(a) To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such a need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier by water or a contract car-

rier by water, as the case may be. Such temporary authority shall be valid for such time as the Commission shall specify (but for not more than an aggregate of one hundred and eighty days),* and shall create no presumption that corresponding permanent authority will be granted thereafter."

The *Merchants Marine Act of 1936, as amended*, 51 Stat. 157, 46 U. S. C. 1161, provides, in part, as follows:

"(b) For the purposes of promoting the construction of vessels necessary to carrying out the policy set forth in section 1101 of this title, any citizen of the United States who is operating a vessel or vessels in the foreign or domestic commerce of the United States or in the fisheries or owns in whole or in part a vessel or vessels being so operated, or who, at the time of purchase or requisition of the vessel by the Government, was operating a vessel or vessels so engaged or owned in whole or in part a vessel or vessels being so operated or had acquired or was having constructed a vessel or vessels for the purpose of operation in such commerce or in the fisheries, may establish a construction reserve fund, for the construction or acquisition of new vessels, to be composed of deposits of proceeds from sales of vessels, indemnities on account of losses of vessels, earnings from the operation of vessels, and receipts, in the form of interest or otherwise, with respect to amounts previously deposited. Such construction reserve fund shall be established, maintained, expended, and used in accordance with the provisions of this section and rules of regulations to be prescribed jointly by the Commission and the Secretary of the Treasury.

"(c) In the case of the sale or actual or constructive total loss of a vessel, if the taxpayer deposits an

* The parenthetical language was struck out of the above section by the Second War Powers Act of March 27, 1942, but was restored as of December 31, 1945, pursuant to the provisions of said Act as amended December 20, 1944. See Appendix to Title 50, U. S. C. A., War, Sections 631 b and 645, and Laws of 78th Congress, second session, Chapter 614, Public Law 509.

amount equal to the net proceeds of the sale or to the net indemnity with respect to the loss in a construction reserve fund established under subsection (b), then, if the taxpayer so elects in his income-tax return for the taxable year in which the gain was realized, no gain shall be recognized to the taxpayer in respect of such sale or indemnification in the computation of net income for the purposes of Federal income or excess profits taxes. * * *"

SUPREME COURT OF THE UNITED STATES.

No. 22.—October Term, 1945.

The United States of America, Interstate Commerce Commission, T. J. McCarthy Steamship Company and Automotive Trades Steamship Company, Appellants,

vs.

Detroit and Cleveland Navigation Company, Great Lakes Transit Company and Nicholson Universal Steamship Company.

Appeal from the District Court of the United States for the Eastern District of Michigan.

[November 5, 1945]

Mr. Justice Douglas delivered the opinion of the Court.

The Interstate Commerce Commission pursuant to § 309(e) of Part III of the Interstate Commerce Act (54 Stat. 941, 49 U. S. C. § 909(e)) granted to T. J. McCarthy Steamship Co. and Automotive Trades Steamship Co. (whom we will call the applicants) a certificate of convenience and necessity to operate as common carriers in the transportation by water of motor vehicles from Detroit, Michigan to ports on Lake Erie and Lake Superior.[1] 260 I. C. C. 175. The appellees, who were protestants in the proceeding before the Commission and who are common carriers of motor vehicles by vessels on the Great Lakes, challenged that order before a district court of three judges. That court set aside the Commission's order. 57 F. Supp. 81. The case is here on appeal.[2]

World War II caused the cessation of the production of motor vehicles for civilian use. Prior to that time appellees as common carriers had transported motor vehicles by vessels from Detroit to various ports on the Great Lakes. The applicants owned three vessels equipped as automobile carriers. These vessels were

[1] The companies are both controlled by T. J. McCarthy. The certificate runs to T. J. McCarthy Steamship Co., for itself and as managing agent of Automotive Trades Steamship Co.

[2] Sec. 210 (28 U. S. C. § 47a) and § 238 of the Judicial Code as amended, 28 U. S. C. § 345.

used extensively prior to the war in transporting automobiles from Detroit to Lake Erie ports. They were for the most part under charter to one of the appellees from 1936 through 1941. With the advent of the war the United States requisitioned many of the vessels of the appellees, using some of them for carrying bulk commodities on the Great Lakes and removing others to the salt water. As a result, two of the appellees at the time of the hearing[3] in June, 1943, had no automobile carriers and were not operating; the third was operating nine vessels of which five were owned by and operated for the United States. In contrast, the applicants owned their three vessels free and clear of any incumbrance; and while those vessels had been converted for carrying bulk traffic, all of the equipment necessary for reconversion into automobile carriers had been preserved. The Commission found that prior to the war there were insufficient facilities for the movement of automobiles on the Great Lakes during certain peak periods even with the carrying capacity of applicant's vessels included. There was testimony of automobile manufacturers and of motor common carriers that the carrying capacity of applicants' vessels would be needed when the manufacture of automobiles was resumed. The Commission found that prior to the war there was a definite need for the carrying capacity of applicants' vessels in this transportation and that there was a reasonable certainty that a like need for that capacity would arise when the production of automobiles for civilian use was resumed. It found that while the applicants could readily reconvert their vessels to handle automobile traffic, there was considerable uncertainty as to the length of time it would take the appellees to procure and place in operation the additional vessels which would be needed when production of automobiles for civilian use was resumed. It concluded that the public interest would be adversely affected if, after production was resumed, appellees were delayed in acquiring the additional facilities needed to meet the transportation demands. On that basis it held that the proposed service would be required by future public convenience and necessity.

The District Court held that the Commission's order could not be sustained in absence of evidence that applicants' vessels were the only vessels available to appellees to meet the prospective transportation demands beyond that furnished by their own ves-

[3] The Commission rendered its decision on March 7, 1944.

sels. It concluded that not only was there no finding that if applicants' vessels were not chartered there was no other carrying capacity which could have been acquired but that the record established the contrary.

The case, however, is not one where there is a service presently being rendered and a newcomer seeks entry into the field. Whether in that event the ruling of the District Court would be correct is a question we do not reach. While the authority of appellees to serve as carriers has not been terminated, the service formerly rendered by them has been interrupted by the war. The applications concern a proposed additional service to be rendered in the future. Sec. 309(c) authorizes the Commission to permit the proposed service to be rendered if it "is or will be required by the present or future public convenience and necessity." That entails a prophecy so far as future requirements are concerned. The Commission made that prophecy on the basis of (1) the earlier service which had been discontinued during the war, (2) the likely requirements for the future, and (3) the ability of the existing carriers to effect an expeditious resumption of service at the war's end. The ability of the applicants promptly to render the service at that time is adequately established. Whether the appellees could or would move with like dispatch is less certain. Many of the vessels which they previously owned had been taken by the United States. And the Commission had doubt as to whether they would or could obtain the necessary additional transportation facilities in time to meet the foreseeable future demands which would arise when automobile manufacture was resumed. We do not have here a case where there was a surplus of facilities in the prior service which the war interrupted. The Commission indeed found that the prior service had not been adequate, a finding which we think is supported by evidence. It took that fact into consideration in determining the margin of safety which the public interest required for the resumption of the interrupted service. We think the inadequacy of the prior service was relevant to that determination. It not only bore upon the future shipping needs which were likely but also underscored the danger of delays in resuming the service if the field were left exclusively to existing carriers.

If the Commission were required to deny these applications unless it found an actual inability on the part of existing carriers to acquire the facilities necessary for future transportation

needs, a limitation would be imposed on the power of the Commission which is not found in the Act. The Commission is the guardian of the public interest in determining whether certificates of convenience and necessity shall be granted. For the performance of that function the Commission has been entrusted with a wide range of discretionary authority. *Interstate Commerce Commission* v. *Parker*, 325 U. S. —. Its function is not only to appraise the facts and to draw inferences from them but also to bring to bear upon the problem an expert judgment and to determine from its analysis of the total situation on which side of the controversy the public interest lies. Its doubt that the public interest will be adequately served if resumption of service is left to existing carriers is entitled to the same respect as its expert judgment on other complicated transportation problems. See *Chesapeake & Ohio R. Co.* v. *United States*, 283 U. S. 35, 42; *Alton R. Co.* v. *United States*, 315 U. S. 15, 23. Forecasts as to the future are necessary to the decision. But neither uncertainties as to the future nor the inability or failure of existing carriers to show the sufficiency of their plans to meet future traffic demands need paralyze the Commission into inaction. It may be that the public interest requires that future shipping needs be assured rather than left uncertain. The Commission has the discretion so to decide. It went no further here.

Reversed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.